

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,  
 Plaintiff,  
 v.  
 APPLE, INC., *et al.*,  
 Defendants.

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Civil Action No. 12-cv-2826 (DLC)

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THE STATE OF TEXAS, *et al.*,  
 Plaintiffs,  
 v.  
 PENGUIN GROUP (USA) INC., *et al.*,  
 Defendants.

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Civil Action No. 12-cv-03394 (DLC)

**DECLARATION OF LAWRENCE E. BUTERMAN IN SUPPORT OF  
PLAINTIFFS' REVISED PROPOSED INJUNCTION**

I, LAWRENCE E. BUTERMAN, hereby declare as follows:

1. I am a Trial Attorney with the Antitrust Division of the Department of Justice, counsel for the United States of America in *U.S. v. Apple*, Civil Action No. 12-cv-2826. I am admitted to practice in the State of New York, the United States District Courts for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit, and am a member in good standing with this Court. I submit this declaration in support of Plaintiffs' revised proposed injunction against Apple.

2. Attached as Exhibit 1 is a true and correct copy of Plaintiffs' Revised Proposed Injunction.

3. Attached as Exhibit 2 is a true and correct copy of a document comparing Plaintiffs' Revised Proposed Injunction to Plaintiffs' initial proposed injunction, submitted to the Court on August 2, 2013. The comparison was generated using Microsoft Word.

4. Attached as Exhibit 3 are true and correct copies of selected pages from the deposition of Mr. Eddy Cue, conducted in this matter on March 12 and March 13, 2013.

5. Attached as Exhibit 4 is a true and correct copy of a printout from the website of Zappos.com, describing the company's iPad shopping app, and the fact that it allows individuals to purchase products from the app. The url is <http://www.zappos.com/zappos-ipad-app>

6. Attached as Exhibit 5 is a true and correct copy of a screenshot taken from amazon.com's iPad shopping app, indicating that one can buy various good, including physical books.

7. Attached as Exhibit 6 is a true and correct copy of Apple's "Getting Started with In-App Purchase on iOS and OS X," version 3.1, dated February 13, 2013. The document is available at <https://developer.apple.com/in-app-purchase/In-App-Purchase-Guidelines.pdf>

8. Attached as Exhibit 7 is a true and correct copy of an article by Claire Cain Miller & Miguel Helft, published by the New York Times on February 1, 2011, entitled *Apple Moves to Tighten Control of App Store*.

9. Attached as Exhibit 8 is a true and correct copy of an article by David Carnoy, published on CNET Reviews on June 9, 2011, entitled *What Apple's Latest Rules Change Means for Kindle, Nook, and Kobo E-reader Apps*.

10. Attached as Exhibit 9 is a true and correct copy of a document produced by Apple in this matter, bearing identification number APPLEBOOK-03306618.

11. Attached as Exhibit 10 is a true and correct copy of an October 2010 version of Apple's App Store Review Guidelines, produced by Apple in this matter, bearing identification number APPLEBOOK-03322259.

12. Attached as Exhibit 11 are true and correct copies of documents produced by Apple in this matter bearing identification numbers APPLEBOOK-03345727, APPLEBOOK-03345725 and APPLEBOOK-03345975.

Dated: August 23, 2013

  
\_\_\_\_\_  
Lawrence E. Buterman

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:12-CV-2826
v.	)	
	)	
APPLE, INC., <i>et al.</i> ,	)	<b>PLAINTIFF UNITED STATES’</b>
	)	<b>FINAL JUDGMENT</b>
Defendants.	)	
	)	and
	)	
THE STATE OF TEXAS, <i>et al.</i> ,	)	<b>PLAINTIFF STATES’</b>
	)	<b>ORDER ENTERING</b>
Plaintiffs,	)	<b>PERMANENT INJUNCTION</b>
	)	
v.	)	
	)	Civil Action No. 1:12-CV-3394 <sup>1</sup>
PENGUIN GROUP (USA) INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

DENISE L. COTE,  
UNITED STATES DISTRICT JUDGE

**I. DEFINITIONS**

As used in this Final Judgment and Order Entering Permanent Injunction:

A. “Agency Agreement” means an agreement between an E-book Publisher and an E-book Retailer under which the Retailer acts as an agent of the Publisher and is paid a

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<sup>1</sup> Pursuant to the agreement of the parties and Court order, the proceedings in *Texas et al. v. Penguin Group (USA) Inc. et al.*, Civ. A. No. 1:12-CV-3394, have been bifurcated. Issues related to non-injunctive relief, including damages and civil penalties, will be addressed in subsequent proceedings.

commission (or a portion of the Retail Price) in connection with the sale of one or more of the Publisher's E-books.

B. "Apple" means Apple, Inc.

C. "E-book" means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-books.

D. "E-book App" means a software application sold or distributed through Apple's "App Store" relating to the reading, browsing, purchase, sale, recommendation, selection, or cataloging of any book or E-book.

E. "E-book Publisher" means any Person that, by virtue of a contract or other relationship with an E-book's author or other rights holder, owns or controls the necessary copyright or other authority (or asserts such ownership or control) over any E-book sufficient to distribute the E-book within the United States to E-book Retailers and to permit such E-book Retailers to sell the E-book to consumers in the United States. Publisher Defendants are E-book Publishers. For purposes of this Final Judgment, E-book Retailers are not E-book Publishers.

F. "E-book Retailer" means any Person that lawfully sells (or seeks to lawfully sell) E-books to consumers in the United States, or through which a Publisher Defendant, under an Agency Agreement, sells E-books to consumers. Apple is an E-book Retailer. For purposes of this Final Judgment, Publisher Defendants and all other Persons whose primary business is book publishing are not E-book Retailers.

G. "Effective Date" means the date, under Section VIII.A of this Final Judgment, on which this Final Judgment takes effect.

H. “External Compliance Monitor” means the person appointed by the Court to perform the duties described in Section VI of this Final Judgment.

I. “Final Judgment” means this document: the Final Judgment in *United States v. Apple, Inc., et al.*, Civil Action No. 1:12-CV-2826, and the Order Entering Permanent Injunction in *The State of Texas, et al. v. Penguin Group (USA) Inc., et al.*, Civil Action No. 1:12-CV-3394.

J. “Hachette” means Hachette Book Group, Inc.

K. “HarperCollins” means HarperCollins Publishers L.L.C.

L. “Macmillan” means Holtzbrinck Publishers, LLC d/b/a Macmillan and Verlagsgruppe Georg von Holtzbrinck GmbH.

M. “Penguin” means Penguin Group (USA), Inc., The Penguin Group, a division of U.K. corporation Pearson plc, The Penguin Publishing Company Ltd, Dorling Kindersley Holdings Limited, and Penguin Random House, a joint venture by and between Pearson plc and Bertelsmann SE & Co. KGaA, and any similar joint venture between Penguin and Random House Inc.

N. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

O. “Plaintiff States” means the States and Commonwealths of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin and the District of Columbia.

P. “Publisher Defendants” means Hachette, HarperCollins, Macmillan, Penguin, and Simon & Schuster.

Q. “Representative Plaintiff States” means, as of the Effective Date of this Final Judgment, the States of Texas and Connecticut. The Plaintiff States may designate a different Plaintiff State as a substitute Representative Plaintiff State at any time by communicating the change in writing to Apple and the United States.

R. “Retail Price” means the price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher sells an E-book to a consumer.

S. “Retail Price MFN” means a term in an agreement between an E-book Publisher and an E-book Retailer under which the Retail Price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher sells one or more E-books to consumers depends in any way on the Retail Price, or discounts from the Retail Price, at which any other E-book Retailer or the E-book Publisher, under an Agency Agreement, through any other E-book Retailer sells the same E-book(s) to consumers.

T. “Simon & Schuster” means Simon & Schuster, Inc.

## **II. APPLICABILITY**

This Final Judgment applies to Apple and each of its affiliates, subsidiaries, officers, directors, agents, employees, successors, and assigns, to any successor to any substantial part of the business, and to all other Persons acting in concert with Apple and having actual notice of this Final Judgment.

## **III. PROHIBITED CONDUCT**

A. Apple shall not enforce any Retail Price MFN in any agreement with an E-book Publisher relating to the sale of E-books.

B. Apple shall not enter into any agreement with an E-book Publisher relating to the sale of E-books that contains a Retail Price MFN.

C. Apple shall not enter into any agreement with a Publisher Defendant that restricts, limits, or impedes Apple's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to purchase one or more E-books. The prohibitions in this Section III.C shall expire, for agreements between Apple and a Publisher Defendant, on the following dates:

1. For agreements between Apple and Hachette: 24 months after the Effective Date of this Final Judgment;

2. For agreements between Apple and Harper Collins: 30 months after the Effective Date of this Final Judgment;

3. For agreements between Apple and Simon & Schuster: 36 months after the Effective Date of this Final Judgment;

4. For agreements between Apple and Penguin: 42 months after the Effective Date of this Final Judgment; and

5. For agreements between Apple and Macmillan: 48 months after the Effective Date of this Final Judgment.

D. Apple shall not (1) retaliate against or punish, (2) threaten to retaliate against or punish, or (3) urge another Person to retaliate against or punish any E-book Publisher for refusing to enter into an agreement with Apple relating to the sale of E-books or for the terms on which the

E-book Publisher sells E-books through any other E-book Retailer. This provision does not require Apple to enter into an agreement with an E-book Publisher or E-book Retailer, or seek to prevent Apple from negotiating terms of agreement in good faith.

E. Apple shall not communicate, directly or indirectly, to any E-book Publisher (1) the status of its contractual negotiations with any other E-book Publisher; (2) the actual or proposed contractual terms or business plans or arrangements it has with any other E-book Publisher, or (3) any non-public competitively sensitive information it learns from any other E-book Publisher, including, but not limited to:

- a. the E-book Publisher's business plans or strategies;
- b. the E-book Publisher's past, present, or future wholesale or retail prices or pricing strategies for books licensed or sold in any format (*e.g.*, print books, E-books, or audio books);
- c. any terms in the E-book Publisher's agreement(s) with any retailer of books licensed or sold in any format; or
- d. any terms in the E-book Publisher's agreement(s) with any author.

Nothing in this Section III.E prohibits Apple from developing and offering to E-book Publishers a standard form contract containing the terms on which Apple would agree to sell the E-book Publishers' E-books, and so informing an E-book Publisher that it is a standard form; nor shall this prohibit Apple from publicly communicating the retail price of E-books available on the iBookstore.

F. Apple shall not enter into or maintain any agreement with any E-book Publisher or supplier of any other form of content (*e.g.*, music, other audio, movies, television shows, or apps)

where such agreement likely will increase, fix, or set the price at which other E-book Retailers or retailers of other forms of content can acquire or sell E-books or other forms of content.

Nothing in this Section III.F prohibits Apple from entering into or maintaining an agreement with an E-book Publisher or supplier of any other form of content merely specifying prices that Apple must pay for the content.

G. Apple shall not enter into or maintain any agreement with any other E-book Retailer where such agreement likely will increase, fix, stabilize, or set the prices or establish other terms on which Apple or the other E-book Retailer sells E-books to consumers.

#### **IV. REQUIRED CONDUCT**

A. On the Effective Date of this Final Judgment, Apple shall terminate any Agency Agreement with a Publisher Defendant.

B. For any E-book App that any Person offered to consumers through Apple's App Store as of July 10, 2013, Apple shall continue to permit such Person to offer that E-book App, or updates to that E-book App, through the App Store.

C. Apple shall apply the same terms and conditions to the sale or distribution of an E-book App through Apple's App Store as Apple applies to all other apps sold or distributed through Apple's App Store, except that, for two years after the Effective Date of this Final Judgment, Apple shall allow any E-book Retailer to provide a hyperlink to its website or e-bookstore in or through its E-book App without either compensating Apple for any sales of E-books that follow consumers' use of such hyperlink or requiring the E-book Retailer to include functionality in the E-book App (*e.g.*, a "buy button") the use of which might impose an obligation on the E-book Retailer to compensate Apple.

D. Apple shall furnish to the United States and the Representative Plaintiff States, within ten business days of receiving such information, any information that reasonably suggests to Apple that its suppliers of any form of content (*e.g.*, books, music, other audio, movies, television shows, or apps) have impermissibly coordinated or are impermissibly coordinating on the terms on which they supply or offer their content to Apple or to any other Person.

## V. ANTITRUST COMPLIANCE

To ensure its compliance with this Final Judgment and the antitrust laws, Apple shall perform the activities enumerated below in Sections V.A through V.J of this Final Judgment. Within thirty days after the Effective Date of this Final Judgment, Apple's Audit Committee, or another committee comprised entirely of outside directors (*i.e.*, directors not also employed by Apple), shall designate a person not employed by Apple as of the Effective Date of the Final Judgment to serve as Antitrust Compliance Officer, who shall report to the Audit Committee or equivalent committee of Apple's Board of Directors and shall be responsible for supervising Apple's performance of the following:

A. furnishing a copy of this Final Judgment, within thirty days of its Effective Date, to each of Apple's officers and directors and to each of Apple's employees engaged, in whole or in part, in activities relating to Apple's iBookstore;

B. furnishing a copy of this Final Judgment in a timely manner to each officer, director, or employee who succeeds to any position identified in Section V.A of this Final Judgment;

C. ensuring that each person identified in Sections V.A and V.B of this Final Judgment receives at least four hours of training annually on the meaning and requirements of this

Final Judgment and the antitrust laws, such training to be delivered by an attorney with relevant experience in the field of antitrust law;

D. obtaining, within sixty days after the Effective Date of this Final Judgment and on each anniversary of the Effective Date of this Final Judgment, from each person identified in Sections V.A and V.B of this Final Judgment, and thereafter maintaining, a certification that each such person (a) has read, understands, and agrees to abide by the terms of this Final Judgment; and (b) is not aware of any violation of this Final Judgment or the antitrust laws or has reported any potential violation to the Antitrust Compliance Officer;

E. conducting, in consultation with the External Compliance Monitor, an annual antitrust compliance audit covering each person identified in Sections V.A and V.B of this Final Judgment, and maintaining all records pertaining to such audits;

F. communicating annually to Apple's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws;

G. taking appropriate action, within three business days of discovering or receiving credible information concerning an actual or potential violation of this Final Judgment, to terminate or modify Apple's conduct to assure compliance with this Final Judgment; and, within seven days of discovering or receiving such information, providing to the United States, the Representative Plaintiff States, and the External Compliance Monitor a description of the actual or potential violation of this Final Judgment and the corrective actions taken;

H. furnishing to the United States, the Representative Plaintiff States, and the External Compliance Monitor on a quarterly basis electronic copies of any non-privileged communications

with any Person containing allegations of Apple's noncompliance with any provisions of this Final Judgment or the antitrust laws;

I. maintaining, and furnishing to the United States, the Representative Plaintiff States, and the External Compliance Monitor on a quarterly basis, a log of all oral and written communications, excluding privileged or public communications, between or among any person identified in Sections V.A or V.B of this Final Judgment and

1. any person employed by or associated with another E-book Retailer, relating, in whole or in part, to E-books, devices for reading E-books, or E-book Apps; or
2. employees or representatives of two or more E-book Publishers, relating, in whole or in part, to E-books, devices for reading E-books, or E-book Apps,

including, but not limited to, an identification (by name, employer, and job title) of the author and recipients of and all participants in the communication, the date, time, and duration of the communication, the medium of the communication, and a description of the subject matter of the communication; and

J. providing to the United States, the Representative Plaintiff States, and the External Compliance Monitor annually, on or before the anniversary of the Effective Date of this Final Judgment, a written statement as to the fact and manner of Apple's compliance with Sections III and IV of this Final Judgment.

## **VI. EXTERNAL COMPLIANCE MONITOR**

A. The Court shall appoint an External Compliance Monitor to undertake the responsibilities and duties described in this Section VI. On or before the Effective Date of this

Final Judgment, the United States and the Representative Plaintiff States jointly shall recommend to the Court one or more persons to serve as External Compliance Monitor.

B. The External Compliance Monitor shall have the power and authority to monitor Apple's compliance with the terms of this Final Judgment, to review and evaluate Apple's existing internal antitrust compliance policies and procedures, and to recommend to Apple changes to address any deficiencies in those policies and procedures.

C. The External Compliance Monitor shall conduct an initial review to assess whether Apple's internal antitrust compliance policies and procedures in existence at the time of his or her appointment are reasonably designed to detect and prevent violations of the antitrust laws. Within 180 days of his or her appointment by the Court, the External Compliance Monitor shall provide a written report to Apple, the United States, and the Representative Plaintiff States setting forth his or her assessment of Apple's internal antitrust compliance policies and procedures and, if appropriate, making recommendations reasonably designed to improve Apple's policies and procedures for ensuring antitrust compliance.

D. The External Compliance Monitor may, at any time prior to the expiration of this Final Judgment, provide one or more additional written reports to Apple, the United States, and the Representative Plaintiff States setting forth additional recommendations reasonably designed to improve Apple's policies and procedures for ensuring antitrust compliance. The External Compliance Monitor may provide such additional reports on his or her own initiative or at the request of the Court, the United States, or the Representative Plaintiff States.

E. Apple shall adopt, within 60 days after it receives a report from the External Compliance Monitor concerning its internal antitrust compliance policies and procedures, all

recommendations to which it does not object as unduly burdensome, impractical, or costly. If Apple objects to any recommendation as unduly burdensome, impractical, or costly, it shall propose in writing to the External Compliance Monitor, the United States, and the Representative Plaintiff States, within 30 days after it receives the report, an alternative policy, procedure, or system designed to achieve the same objective or purpose. If Apple and the External Compliance Monitor fail, after good faith discussions, to agree on an alternative policy or procedure within 30 days of Apple's objection to a recommendation, Apple shall promptly adopt the External Compliance Monitor's initial recommendation or, after consultation with the United States and the Representative Plaintiff States, apply to this Court within 14 days for relief.

F. The External Compliance Monitor shall file quarterly reports with the United States, the Representative Plaintiff States, and the Court setting forth Apple's efforts to comply with the Final Judgment. To the extent such reports contain information that the External Compliance Monitor deems confidential, such reports shall not be filed in the public docket of the Court.

G. If the External Compliance Monitor in the exercise of his or her responsibilities under this Section VI discovers or receives evidence that suggests to the External Compliance Monitor that Apple is violating or has violated this Final Judgment or the antitrust laws, the External Compliance Monitor shall promptly provide that information to the United States and the Representative Plaintiff States.

H. Apple shall assist the External Compliance Monitor in performance of the responsibilities set forth in this Section VI. Apple shall take no action to interfere with or to

impede the External Compliance Monitor's accomplishment of its responsibilities. The External Compliance Monitor may, on reasonable notice to Apple:

1. interview, either informally or on the record, any Apple personnel, who may have counsel present; any such interview to be subject to the reasonable convenience of such personnel and without restraint or interference by Apple;
2. inspect and copy any documents in the possession, custody, or control of Apple; and
3. require Apple to provide compilations of documents, data, or other information, and to submit reports to the External Compliance Monitor containing such material, in such form as the External Compliance Monitor may reasonably direct.

I. Any objections by Apple to actions by the External Compliance Monitor in fulfillment of the External Compliance Monitor's responsibilities must be conveyed in writing to the United States and the Representative Plaintiff States within ten calendar days after the action giving rise to the objection.

J. The External Compliance Monitor may hire, subject to the approval of the United States, after consultation with the Representative Plaintiff States, any consultants, accountants, attorneys, or other persons reasonably necessary to fulfilling the External Compliance Monitor's responsibilities. The External Compliance Monitor and any persons hired to assist the External Compliance Monitor shall serve at the cost and expense of Apple, on such terms and conditions as the United States, after consultation with the Representative Plaintiff States, approves, including, but not limited to, the execution of customary confidentiality agreements. The compensation of the External Compliance Monitor and any persons hired to assist the External Compliance Monitor

shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. The External Compliance Monitor shall submit a quarterly expense report to the United States and the Representative Plaintiff States.

K. If the United States, after consultation with the Representative Plaintiff States, or Apple determines that the External Compliance Monitor has ceased to act or failed to act diligently or in a cost-effective manner, it may recommend that the Court appoint a substitute External Compliance Monitor.

## **VII. PLAINTIFFS' ACCESS**

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice Antitrust Division or the Representative Plaintiff States, including, but not limited to, consultants and other persons retained by the United States or the Representative Plaintiff States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or a joint written request by authorized representatives of each Representative Plaintiff State, and on reasonable notice to Apple, be permitted:

1. access during regular business hours to inspect and copy, or at the option of the United States or the Representative Plaintiff States, to require Apple to provide to the United States and the Representative Plaintiff States hard copy or electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Apple, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Apple's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Apple.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or a joint written request by authorized representatives of each Representative Plaintiff State, Apple shall submit written reports or respond to written interrogatories, under oath, relating to any of the matters contained in this Final Judgment. Written reports authorized under this paragraph may require Apple to conduct, at its cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States or any Plaintiff State to any person other than an authorized representative of the executive branch of the United States, the Attorney General's Office of any Plaintiff State, or the External Compliance Monitor, except in the course of legal proceedings to which the United States or the relevant Plaintiff State(s) is a party (including, but not limited to, grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Apple to the United States and the Representative Plaintiff States, Apple represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Apple marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil

Procedure,” then the United States and the Representative Plaintiff States shall give Apple ten calendar days notice prior to divulging such material in any civil or administrative proceeding.

### **VIII. ADDITIONAL PROVISIONS**

A. This Final Judgment shall take effect 30 days after the date on which it is entered. If the Final Judgment is stayed, all time periods in the Final Judgment will be tolled during the stay.

B. This Court retains jurisdiction to enable the United States, the Representative Plaintiff States, any other Plaintiff State (after consultation with the United States and the Representative Plaintiff States), or Apple to apply to this Court at any time for, or to act *sua sponte* to issue, further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

C. This Final Judgment shall expire by its own terms and without further action of this Court five years after its Effective Date, provided that, at any time prior to its expiration, the Court may *sua sponte* or on the application of the United States or any Plaintiff State extend the Final Judgment by one or more one-year periods, if necessary to ensure effective relief.

**SO ORDERED:**

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**DENISE L. COTE**  
**UNITED STATES DISTRICT JUDGE**

Dated:

# **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 1:12-CV-2826
v.	)	
	)	
APPLE, INC., <i>et al.</i> ,	)	<b>PLAINTIFF UNITED STATES’</b>
	)	<b>FINAL JUDGMENT</b>
Defendants.	)	
	)	and
	)	
THE STATE OF TEXAS, <i>et al.</i> ,	)	<b>PLAINTIFF STATES’</b>
	)	<b>ORDER ENTERING</b>
Plaintiffs,	)	<b>PERMANENT INJUNCTION</b>
	)	
v.	)	
	)	Civil Action No. 1:12-CV-3394 <sup>1</sup>
PENGUIN GROUP (USA) INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

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UNITED STATES DISTRICT JUDGE

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commission (or a portion of the Retail Price) in connection with the sale of one or more of the Publisher's E-books.

B. "Apple" means Apple, Inc.

C. "E-book" means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-books.

D. "E-book App" means a software application sold or distributed through Apple's "App Store" relating to the reading, browsing, purchase, sale, recommendation, selection, or cataloging of any book or E-book.

E. "E-book Publisher" means any Person that, by virtue of a contract or other relationship with an E-book's author or other rights holder, owns or controls the necessary copyright or other authority (or asserts such ownership or control) over any E-book sufficient to distribute the E-book within the United States to E-book Retailers and to permit such E-book Retailers to sell the E-book to consumers in the United States. Publisher Defendants are E-book Publishers. For purposes of this Final Judgment, E-book Retailers are not E-book Publishers.

F. "E-book Retailer" means any Person that lawfully sells (or seeks to lawfully sell) E-books to consumers in the United States, or through which a Publisher Defendant, under an Agency Agreement, sells E-books to consumers. Apple is an E-book Retailer. For purposes of this Final Judgment, Publisher Defendants and all other Persons whose primary business is book publishing are not E-book Retailers.

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J. “Hachette” means Hachette Book Group, Inc.

K. “HarperCollins” means HarperCollins Publishers L.L.C.

L. “Macmillan” means Holtzbrinck Publishers, LLC d/b/a Macmillan and Verlagsgruppe Georg von Holtzbrinck GmbH.

M. “Penguin” means Penguin Group (USA), Inc., The Penguin Group, a division of U.K. corporation Pearson plc, The Penguin Publishing Company Ltd, Dorling Kindersley Holdings Limited, and Penguin Random House, a joint venture by and between Pearson plc and Bertelsmann SE & Co. KGaA, and any similar joint venture between Penguin and Random House Inc.

N. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

O. “Plaintiff States” means the States and Commonwealths of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin and the District of Columbia.

P. “Publisher Defendants” means Hachette, HarperCollins, Macmillan, Penguin, and Simon & Schuster.

Q. “Representative Plaintiff States” means, as of the Effective Date of this Final Judgment, the States of Texas and Connecticut. The Plaintiff States may designate a different Plaintiff State as a substitute Representative Plaintiff State at any time by communicating the change in writing to Apple and the United States.

R. “Retail Price” means the price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher sells an E-book to a consumer.

S. “Retail Price MFN” means a term in an agreement between an E-book Publisher and an E-book Retailer under which the Retail Price at which an E-book Retailer or, under an Agency Agreement, an E-book Publisher sells one or more E-books to consumers depends in any way on the Retail Price, or discounts from the Retail Price, at which any other E-book Retailer or the E-book Publisher, under an Agency Agreement, through any other E-book Retailer sells the same E-book(s) to consumers.

T. “Simon & Schuster” means Simon & Schuster, Inc.

## **II. APPLICABILITY**

This Final Judgment applies to Apple and each of its affiliates, subsidiaries, officers, directors, agents, employees, successors, and assigns, to any successor to any substantial part of the business, and to all other Persons acting in concert with Apple and having actual notice of this Final Judgment.

## **III. PROHIBITED CONDUCT**

A. ~~For five years after the Effective Date of this Final Judgment,~~ Apple shall not enforce any Retail Price MFN in any agreement with an E-book Publisher relating to the sale of E-books.

B. ~~For five years after the Effective Date of this Final Judgment,~~ Apple shall not enter into any agreement with an E-book Publisher relating to the sale of E-books that contains a Retail Price MFN.

C. ~~For five years after the Effective Date of this Final Judgment,~~ Apple shall not enter into any agreement with a Publisher Defendant that restricts, limits, or impedes Apple's ability to set, alter, or reduce the Retail Price of any E-book or to offer price discounts or any other form of promotions to encourage consumers to purchase one or more E-books. The prohibitions in this Section III.C shall expire, for agreements between Apple and a Publisher Defendant, on the following dates:

1. For agreements between Apple and Hachette: 24 months after the Effective Date of this Final Judgment;

2. For agreements between Apple and Harper Collins: 30 months after the Effective Date of this Final Judgment;

3. For agreements between Apple and Simon & Schuster: 36 months after the Effective Date of this Final Judgment;

4. For agreements between Apple and Penguin: 42 months after the Effective Date of this Final Judgment; and

5. For agreements between Apple and Macmillan: 48 months after the Effective Date of this Final Judgment.

D. Apple shall not (1) retaliate against or punish, (2) threaten to retaliate against or punish, or (3) urge another Person to retaliate against or punish any E-book Publisher for refusing to enter into an agreement with Apple relating to the sale of E-books or for the terms on which the E-book Publisher sells E-books through any other E-book Retailer. This provision does not require Apple to enter into an agreement with an E-book Publisher or E-book Retailer, or seek to prevent Apple from negotiating terms of agreement in good faith.

E. Apple shall not communicate, directly or indirectly, to any E-book Publisher (1) the status of its contractual negotiations with any other E-book Publisher; (2) the actual or proposed contractual terms or business plans or arrangements it has with any other E-book Publisher, or (3) any non-public competitively sensitive information it learns from any other E-book Publisher, including, but not limited to:

- a. the E-book Publisher's business plans or strategies;
- b. the E-book Publisher's past, present, or future wholesale or retail prices or pricing strategies for books licensed or sold in any format (*e.g.*, print books, E-books, or audio books);
- c. any terms in the E-book Publisher's agreement(s) with any retailer of books licensed or sold in any format; or
- d. any terms in the E-book Publisher's agreement(s) with any author.

Nothing in this Section III.E prohibits Apple from developing and offering to E-book Publishers a standard form contract containing the terms on which Apple would agree to sell the E-book Publishers' E-books, and so informing an E-book Publisher that it is a standard form; nor

[shall this prohibit Apple from publicly communicating the retail price of E-books available on the iBookstore.](#)

F. Apple shall not enter into or maintain any agreement with any E-book Publisher or supplier of any other form of content (*e.g.*, music, other audio, movies, television shows, or apps) where such agreement likely will increase, fix, or set the price at which other E-book Retailers or retailers of other forms of content can acquire or sell E-books or other forms of content.

Nothing in this Section III.F prohibits Apple from entering into or maintaining an agreement with an E-book Publisher or supplier of any other form of content merely specifying prices that Apple must pay for the content.

G. Apple shall not enter into or maintain any agreement with any other E-book Retailer where such agreement likely will increase, fix, stabilize, or set the prices or establish other terms on which Apple or the other E-book Retailer sells E-books to consumers.

#### **IV. REQUIRED CONDUCT**

A. On the Effective Date of this Final Judgment, Apple shall terminate any Agency Agreement with a Publisher Defendant.

B. For any E-book App that any Person offered to consumers through Apple's App Store as of July 10, 2013, Apple shall continue to permit such Person to offer that E-book App, or updates to that E-book App, ~~on the same terms and conditions between Apple and such Person or on terms and conditions that are more favorable to such Person~~ [through the App Store.](#)

C. Apple shall apply the same terms and conditions to the sale or distribution of an E-book App through Apple's App Store as Apple applies to all other apps sold or distributed through Apple's App Store, except that, for two years after the Effective Date of this Final

Judgment, Apple shall allow any E-book Retailer to provide a hyperlink to its website or e-bookstore in or through its E-book App without either compensating Apple for any sales of E-books that follow consumers' use of such hyperlink or requiring the E-book Retailer to include functionality in the E-book App (*e.g.*, a "buy button") the use of which might impose an obligation on the E-book Retailer to compensate Apple.

D. Apple shall furnish to the United States and the Representative Plaintiff States, within ten business days of receiving such information, any information that reasonably suggests to Apple that its suppliers of any form of content (*e.g.*, books, music, other audio, movies, television shows, or apps) have impermissibly coordinated or are impermissibly coordinating on the terms on which they supply or offer their content to Apple or to any other Person.

## **V. ANTITRUST COMPLIANCE**

To ensure its compliance with this Final Judgment and the antitrust laws, Apple shall perform the activities enumerated below in Sections V.A through V.J of this Final Judgment. Within thirty days after the Effective Date of this Final Judgment, Apple's Audit Committee, or another committee comprised entirely of outside directors (*i.e.*, directors not also employed by Apple), shall designate a person not employed by Apple as of the Effective Date of the Final Judgment to serve as Antitrust Compliance Officer, who shall report to the Audit Committee or equivalent committee of Apple's Board of Directors and shall be responsible for supervising Apple's performance of the following:

A. furnishing a copy of this Final Judgment, within thirty days of its Effective Date, to each of Apple's officers and directors and to each of Apple's employees engaged, in whole or in part, in activities relating to Apple's iBookstore;

B. furnishing a copy of this Final Judgment in a timely manner to each officer, director, or employee who succeeds to any position identified in Section V.A of this Final Judgment;

C. ensuring that each person identified in Sections V.A and V.B of this Final Judgment receives at least four hours of training annually on the meaning and requirements of this Final Judgment and the antitrust laws, such training to be delivered by an attorney with relevant experience in the field of antitrust law;

D. obtaining, within sixty days after the Effective Date of this Final Judgment and on each anniversary of the Effective Date of this Final Judgment, from each person identified in Sections V.A and V.B of this Final Judgment, and thereafter maintaining, a certification that each such person (a) has read, understands, and agrees to abide by the terms of this Final Judgment; and (b) is not aware of any violation of this Final Judgment or the antitrust laws or has reported any potential violation to the Antitrust Compliance Officer;

E. conducting, in consultation with the External Compliance Monitor, an annual antitrust compliance audit covering each person identified in Sections V.A and V.B of this Final Judgment, and maintaining all records pertaining to such audits;

F. communicating annually to Apple's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws;

G. taking appropriate action, within three business days of discovering or receiving credible information concerning an actual or potential violation of this Final Judgment, to terminate or modify Apple's conduct to assure compliance with this Final Judgment; and, within

seven days of discovering or receiving such information, providing to the United States, the Representative Plaintiff States, and the External Compliance Monitor a description of the actual or potential violation of this Final Judgment and the corrective actions taken;

H. furnishing to the United States, the Representative Plaintiff States, and the External Compliance Monitor on a quarterly basis electronic copies of any non-privileged communications with any Person containing allegations of Apple's noncompliance with any provisions of this Final Judgment or the antitrust laws;

I. maintaining, and furnishing to the United States, the Representative Plaintiff States, and the External Compliance Monitor on a quarterly basis, a log of all oral and written communications, excluding privileged or public communications, between or among any person identified in Sections V.A or V.B of this Final Judgment and

1. any person employed by or associated with another E-book Retailer, relating, in whole or in part, to E-books, devices for reading E-books, or E-book Apps; or
2. employees or representatives of two or more E-book Publishers, relating, in whole or in part, to E-books, devices for reading E-books, or E-book Apps,

including, but not limited to, an identification (by name, employer, and job title) of the author and recipients of and all participants in the communication, the date, time, and duration of the communication, the medium of the communication, and a description of the subject matter of the communication; and

J. providing to the United States, the Representative Plaintiff States, and the External Compliance Monitor annually, on or before the anniversary of the Effective Date of this Final

Judgment, a written statement as to the fact and manner of Apple's compliance with Sections III and IV of this Final Judgment.

**VI. EXTERNAL COMPLIANCE MONITOR**

A. The Court shall appoint an External Compliance Monitor to undertake the responsibilities and duties described in this Section VI. On or before the Effective Date of this Final Judgment, the United States and the Representative Plaintiff States jointly shall recommend to the Court one or more persons to serve as External Compliance Monitor.

B. The External Compliance Monitor shall have the power and authority to monitor Apple's compliance with the terms of this Final Judgment, to review and evaluate Apple's existing internal antitrust compliance policies and procedures, and to recommend to Apple changes to address any deficiencies in those policies and procedures.

C. The External Compliance Monitor shall conduct an initial review to assess whether Apple's internal antitrust compliance policies and procedures in existence at the time of his or her appointment are reasonably designed to detect and prevent violations of the antitrust laws. Within 180 days of his or her appointment by the Court, the External Compliance Monitor shall provide a written report to Apple, the United States, and the Representative Plaintiff States setting forth his or her assessment of Apple's internal antitrust compliance policies and procedures and, if appropriate, making recommendations reasonably designed to improve Apple's policies and procedures for ensuring antitrust compliance.

D. The External Compliance Monitor may, at any time prior to the expiration of this Final Judgment, provide one or more additional written reports to Apple, the United States, and the Representative Plaintiff States setting forth additional recommendations reasonably designed to

improve Apple's policies and procedures for ensuring antitrust compliance. The External Compliance Monitor may provide such additional reports on his or her own initiative or at the request of the Court, the United States, or the Representative Plaintiff States.

E. Apple shall adopt, within 60 days after it receives a report from the External Compliance Monitor concerning its internal antitrust compliance policies and procedures, all recommendations to which it does not object as unduly burdensome, impractical, or costly. If Apple objects to any recommendation as unduly burdensome, impractical, or costly, it shall propose in writing to the External Compliance Monitor, the United States, and the Representative Plaintiff States, within 30 days after it receives the report, an alternative policy, procedure, or system designed to achieve the same objective or purpose. If Apple and the External Compliance Monitor fail, after good faith discussions, to agree on an alternative policy or procedure within 30 days of Apple's objection to a recommendation, Apple shall promptly adopt the External Compliance Monitor's initial recommendation or, after consultation with the United States and the Representative Plaintiff States, apply to this Court within 14 days for relief.

F. The External Compliance Monitor shall file quarterly reports with the United States, the Representative Plaintiff States, and the Court setting forth Apple's efforts to comply with the Final Judgment. To the extent such reports contain information that the External Compliance Monitor deems confidential, such reports shall not be filed in the public docket of the Court.

G. If the External Compliance Monitor in the exercise of his or her responsibilities under this Section VI discovers or receives evidence that suggests to the External Compliance Monitor that Apple is violating or has violated this Final Judgment or the antitrust laws, the

External Compliance Monitor shall promptly provide that information to the United States and the Representative Plaintiff States.

H. Apple shall assist the External Compliance Monitor in performance of the responsibilities set forth in this Section VI. Apple shall take no action to interfere with or to impede the External Compliance Monitor's accomplishment of its responsibilities. The External Compliance Monitor may, on reasonable notice to Apple:

1. interview, either informally or on the record, any Apple personnel, who may have counsel present; any such interview to be subject to the reasonable convenience of such personnel and without restraint or interference by Apple;
2. inspect and copy any documents in the possession, custody, or control of Apple; and
3. require Apple to provide compilations of documents, data, or other information, and to submit reports to the External Compliance Monitor containing such material, in such form as the External Compliance Monitor may reasonably direct.

I. Any objections by Apple to actions by the External Compliance Monitor in fulfillment of the External Compliance Monitor's responsibilities must be conveyed in writing to the United States and the Representative Plaintiff States within ten calendar days after the action giving rise to the objection.

J. The External Compliance Monitor may hire, subject to the approval of the United States, after consultation with the Representative Plaintiff States, any consultants, accountants, attorneys, or other persons reasonably necessary to fulfilling the External Compliance Monitor's responsibilities. The External Compliance Monitor and any persons hired to assist the External

Compliance Monitor shall serve at the cost and expense of Apple, on such terms and conditions as the United States, after consultation with the Representative Plaintiff States, approves, including, but not limited to, the execution of customary confidentiality agreements. The compensation of the External Compliance Monitor and any persons hired to assist the External Compliance Monitor shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. The External Compliance Monitor shall submit a quarterly expense report to the United States and the Representative Plaintiff States.

K. If the United States, after consultation with the Representative Plaintiff States, or Apple determines that the External Compliance Monitor has ceased to act or failed to act diligently or in a cost-effective manner, it may recommend that the Court appoint a substitute External Compliance Monitor.

## **VII. PLAINTIFFS' ACCESS**

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice Antitrust Division or the Representative Plaintiff States, including, but not limited to, consultants and other persons retained by the United States or the Representative Plaintiff States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or a joint written request by authorized representatives of each Representative Plaintiff State, and on reasonable notice to Apple, be permitted:

1. access during regular business hours to inspect and copy, or at the option of

the United States or the Representative Plaintiff States, to require Apple to provide to the United States and the Representative Plaintiff States hard copy or electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Apple, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Apple's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Apple.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or a joint written request by authorized representatives of each Representative Plaintiff State, Apple shall submit written reports or respond to written interrogatories, under oath, relating to any of the matters contained in this Final Judgment. Written reports authorized under this paragraph may require Apple to conduct, at its cost, an independent audit or analysis relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States or any Plaintiff State to any person other than an authorized representative of the executive branch of the United States, the Attorney General's Office of any Plaintiff State, or the External Compliance Monitor, except in the course of legal proceedings to which the United States or the relevant Plaintiff State(s) is a party (including, but not limited to, grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Apple to the United States and the Representative Plaintiff States, Apple represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Apple marks each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,” then the United States and the Representative Plaintiff States shall give Apple ten calendar days notice prior to divulging such material in any civil or administrative proceeding.

### **VIII. ADDITIONAL PROVISIONS**

A. This Final Judgment shall take effect 30 days after the date on which it is entered. If the Final Judgment is stayed, all time periods in the Final Judgment will be tolled during the stay.

B. This Court retains jurisdiction to enable the United States, the Representative Plaintiff States, any other Plaintiff State (after consultation with the United States and the Representative Plaintiff States), or Apple to apply to this Court at any time for, or to act *sua sponte* to issue, further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

C. ~~Unless this Court grants an extension, this~~This Final Judgment shall expire by its own terms and without further action of this Court ~~ten~~five years after its Effective Date, provided that, at any time prior to its expiration, the Court may sua sponte or on the application of the United States or any Plaintiff State extend the Final Judgment by one or more one-year periods, if necessary to ensure effective relief.

**SO ORDERED:**

---

**DENISE L. COTE**  
**UNITED STATES DISTRICT JUDGE**

Dated:

# **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

Plaintiff,                   CASE NO.

vs.                           12-CV-2826(DLC)

APPLE INC., et. al,

Defendants.

-----x

VIDEOTAPE DEPOSITION OF EDDY CUE

TUESDAY, MARCH 12, 2013

Palo Alto, California

10:05 a.m.

Reported by:  
KIMBERLEE SCHROEDER, CSR, RPR, CCRR  
Job No.: 29197

1 10:07:15 its investigation on or about January 25th, 2011?

2 10:07:22 A. I do.

3 10:07:23 MR. BUTERMAN: I'm going to ask the Court

4 10:07:25 Reporter to mark as Exhibit 1 a copy of your

5 10:07:28 deposition transcript. I think that we'll probably be

6 10:07:31 referring to it from time to time over the next couple

7 10:07:33 of days, so I just want to have it -- I want you to

8 10:07:38 have it there, and we can refer to it when we need to.

9 10:07:42 A. Okay.

10 (Plaintiff's Exhibit 1 was

11 10:07:57 marked for identification.)

12 10:07:57 MR. BUTERMAN: Q. Just -- you can leaf

13 10:07:59 through it quickly. My question is: Do you recognize

14 10:08:03 that to be the transcript from your deposition?

15 10:08:18 A. (Reviewing document.)

16 10:08:19 Yes, I believe it is.

17 10:08:20 Q. Great. Now, the next bit of housekeeping.

18 10:08:26 There were a couple of documents that Apple

19 10:08:28 produced to us in this litigation earlier this week,

20 10:08:32 and I'm going to introduce them as exhibits and see if

21 10:08:35 maybe you can just tell me what you know about them.

22 10:08:39 Let me mark as Exhibit 2 a document bearing

23 10:08:42 identification number APLEBOOK-03546224.

24 (Plaintiff's Exhibit 2 was

25 10:09:09 marked for identification.)

1 10:09:09 MR. BUTERMAN: Then as Exhibit 3, a document  
2 10:09:12 bearing identification number APLEBOOK-03546241.  
3 (Plaintiff's Exhibit 3 was  
4 10:09:34 marked for identification.)  
5 10:09:34 MR. BUTERMAN: Q. Mr. Cue, my questions are  
6 10:09:36 going to be very general in nature, but please take as  
7 10:09:40 much time as you need to familiarize yourself with the  
8 10:09:43 documents.  
9 10:09:43 A. (Reviewing document.)  
10 10:09:53 Q. So, Mr. Cue, starting with Exhibit 2, can you  
11 10:09:56 tell me what Exhibit 2 is?  
12 10:09:59 A. I believe this is a document that we create  
13 10:10:03 that we make available to all employees to describe  
14 10:10:06 the way we do business on a worldwide basis.  
15 10:10:11 Q. And for the record, the document is entitled  
16 10:10:14 "Business Conduct: The Way We Do Business Worldwide";  
17 10:10:18 correct?  
18 10:10:18 A. That's correct.  
19 10:10:19 Q. How often do you receive a copy of this  
20 10:10:22 document?  
21 10:10:23 A. I don't recall that.  
22 10:10:24 Q. Do you recall ever receiving a copy of this  
23 10:10:29 document?  
24 10:10:29 A. Um, I don't recall.  
25 10:10:32 Q. Do you know if Apple has a policy to provide

1 10:10:41 this document to all of its employees?

2 10:10:44 A. I believe we do, but I don't know for sure.

3 10:10:47 Q. Okay. And then with respect to Exhibit 3,

4 10:10:50 that document is entitled, "Antitrust and Competition

5 10:10:54 Law Policy"; correct?

6 10:10:57 A. Correct.

7 10:10:57 Q. And do you understand what this document is?

8 10:11:02 A. I'm not sure.

9 10:11:04 Q. Do you recall if you've ever seen it before?

10 10:11:07 A. I don't recall.

11 10:11:09 Q. And do you know whether this is a document

12 10:11:15 that is regularly disseminated to Apple employees?

13 10:11:20 A. Again, I don't know.

14 10:11:22 Q. Okay. Are you required to complete any types

15 10:11:35 of annual training?

16 10:11:37 A. I complete certain training. I don't know if

17 10:11:40 it's annual. I don't know the timing of it.

18 10:11:42 Q. And once you complete training, are you

19 10:11:44 required to sign some sort of certification that

20 10:11:47 you've completed the training?

21 10:11:49 A. I don't recall. Maybe. It's all electronic,

22 10:11:55 so...

23 10:11:55 Q. Benefits of working at Apple.

24 10:11:57 Can you tell me what your title is?

25 10:12:05 A. Yes. I'm senior vice president of internet

## REPORTER'S CERTIFICATE

1  
2  
3 I, KIMBERLEE SCHROEDER, CSR 11414, duly  
4 authorized to administer oaths pursuant to Section  
5 30(c) of the Federal Rules of Civil Procedure, hereby  
6 certify that the witness in the foregoing deposition  
7 was by me duly sworn to testify the truth, the whole  
8 truth and nothing but the truth in the within-entitled  
9 cause; that said deposition was taken at the time and  
10 place therein stated; that the testimony of the said  
11 witness was reported by me and thereafter transcribed  
12 by me and that the witness was given an opportunity to  
13 read and correct said deposition and to subscribe the  
14 same.

15 I further certify that I am not of counsel or  
16 attorney for either or any of the parties to said  
17 cause of action, nor in any way interested in the  
18 outcome of the cause named in said cause of action.

19 I declare under penalty of perjury under the  
20 laws of the State of California that the foregoing is  
21 true and correct.

22 Dated this 13th day of March, 2013.

23  
24 KIMBERLEE SCHROEDER, CSR, RPR, CCRR  
25

# **EXHIBIT 4**

*the zappos app for iPad*

TRY IT. RATE IT. WE LOVE YOU.

DOWNLOAD IT TODAY

Available on the App Store

In our native shopping app for the iPad® mobile device, you'll be able to search, browse, read reviews, collect favorites, AND buy really awesome products from a brand selection most folks probably didn't even realize we carried.

At Zappos.com you can find super cool cases and accessories for your iPad mobile phone. We have iPad mobile device cases, cell phone cases, headphones, and electronics. If you're already familiar with all the things we carry, then you'll be extra pleased to learn that the full catalog of products is available through the app.

Our app hit over 10,000 downloads in its first week in the app store, ranked in the top 10 free app list, and spent time in "New and Noteworthy" and the "What's Hot" lists within the Apple app store.

We're always looking for feedback and ideas, so please download it and give it a spin. We'd like to hear from you via @Zappos\_Mobile on Twitter. Bring on the good, the bad, and the not so pretty.

Try it. Rate it. We love you!

**Download Now**

ZAPPOS FAMILY CORE VALUE: 10. Be Humble

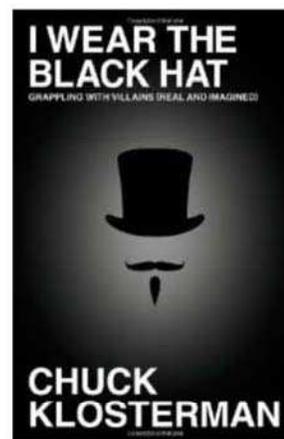
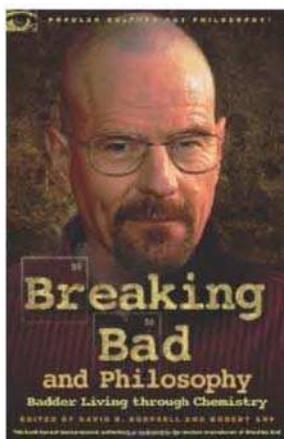
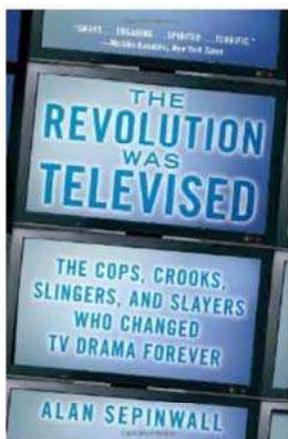
# **EXHIBIT 5**

# Gold Box

New Deals. Every Day.



## More Items to Consider



## More Recommendations for You



**HDMI 3-In 1-Out HDMI Auto Switch with 1.5 ft. Cable**

Accessory

**\$8.52**

★★★★☆ 945 Reviews

[See more recommendations](#)

Amazon.com  
**Gift Cards**



Need a last minute gift?

**Best Sellers in Televisions & Video** [See More](#)

Google Chromecast

Roku 3 Streaming

# **EXHIBIT 6**



# Getting Started with In-App Purchase on iOS and OS X

Version 3.1

## Getting Started with In-App Purchase Overview

In-App Purchase gives you the flexibility to support a variety of business models in your iOS apps and Mac apps. With In-App Purchase, you can offer your customers additional digital content, functionality, services and even subscriptions within your paid or free app.

For example, In-App Purchase will allow you to sell:

- Digital books or photos
- Additional game levels
- Access to a turn-by-turn map service
- Subscriptions to digital magazines or newsletters
- Digital content hosted on Apple servers

In-App Purchase is implemented in your app via the Store Kit framework. Store Kit provides the functionality to process payments for items offered in your app via the App Store and Mac App Store. In-App Purchase uses the same business terms used for apps sold on the App Store and Mac App Store. You receive 70% of the purchase price of each item you sell within your app, paid to you on a monthly basis—no credit card fees apply.

This document describes in detail the types of business models supported by In-App Purchase and gives you the information you need to create an In-App Purchase experience that users find compelling, intuitive, and easy to use.

## What to Sell

The catalog of items you plan to sell is a primary part of the In-App Purchase user experience. Think carefully about what your business model is and what you want to sell in your application.

There are four supported categories of In-App Purchase items that you may sell:

- Content
- Functionality
- Services
- Subscriptions

Items from the supported categories must fall within one of the following purchase types:

- Consumables
- Non-Consumables
- Auto-Renewable Subscriptions
- Free Subscriptions
- Non-Renewing Subscriptions

There are a handful of important guidelines to keep in mind as you design your application:

- You must deliver your digital good or service within your app. Do not use In-App Purchase to sell real-world goods and services.
- You must make your In-App Purchase items available to all of the devices registered to a user.

- You may not offer items that represent intermediary currency because it is important that users know the specific good or service that they are buying.
- Items you offer for purchase may not contain, or relate to, pornography, hate speech, defamation, or gambling (simulated gambling is acceptable).
- In-App Purchase items cannot be shared across applications or platforms.

## **In-App Purchase Types**

Items offered via In-App Purchase fall within one of the five following purchase types. Make sure to evaluate what the proper purchase type is for your item before you set up your In-App Purchase product in iTunes Connect.

### **Consumables**

Consumables are In-App Purchases that must be purchased each time the user needs that item. Consumable In-App Purchases are available for both iOS apps and Mac apps.

Some examples of Consumable purchase types are:

- Supplies in a game (ammunition, health points, cheats, extra lives, etc)
- Accelerators used to decrease advancement time within an app

### **Non-Consumables**

Non-Consumables are In-App Purchases that only need to be purchased once by the user and are available to all devices registered to a user. This purchase type is used for services that do not expire. Non-Consumable In-App Purchases are available for both iOS apps and Mac apps.

Non-Consumable content may be bundled in your app's binary when you submit to the app store, or it may be downloaded after the user makes the purchase. Starting with iOS 6.0 and OS X Mountain Lion 10.8, your content can be hosted on Apple's servers. This eliminates the need for you to maintain a server to host content. There is no additional charge for using this functionality. After the user makes a purchase, you can use the SKDownload class in Store Kit to download the content to the user's device. Hosted content is built using Xcode and uploaded to iTunes Connect. Hosted content is particularly useful if you have large content to download, but it can be used for any downloadable content. See the iTunes Connect Developer Guide for details on how to configure hosted content in iTunes Connect, and the SKDownload class reference for details on how to download the content using Store Kit.

Some examples of Non-Consumable purchase types are:

- Additional levels within a game
- Access to pro-features such as additional camera lenses or audio effects
- Lifetime subscription to a service
- Books and individual magazine issues

### **Auto-Renewable Subscriptions**

Auto-Renewable Subscriptions allow the user to purchase episodic content or access to dynamic digital content for a set duration time. At the end of each duration, the subscription will renew itself, until a user opts out. The Auto-Renewable Subscription In-App Purchase type is available for iOS apps only.

Examples of Auto-Renewable Subscription purchase types are:

- Recurring delivery of newspapers or magazine issues
- Monthly subscription to audio or video streaming feed
- Weekly membership to a dating service
- Business app providing cloud storage services

### **Free Subscriptions**

Free Subscriptions are an extension of Auto-Renewable Subscriptions that permit the delivery of free subscription content to Newsstand-enabled applications. The Free Subscription In-App Purchase type is implemented in the same way as an Auto-Renewable Subscription, just without any charges to the user. Free Subscriptions do not have expirations, but the user can turn off the subscription at any time.

### **Non-Renewing Subscriptions**

Non-Renewing Subscriptions allow the sale of services with a limited duration. Non-Renewing Subscriptions must be used for In-App Purchases that offer time-based access to static content and are only available to iOS apps.

Examples of Non-Renewing Subscription purchase types are:

- One week subscription to voice guidance feature within a navigation app
- Annual subscription to online catalog of archived video or audio

## **In-App Purchase Categories**

### **Content**

Content items include digital books, magazines, photos, artwork, game levels, game characters, and other digital content that can be delivered within your application.

Users view the items they purchase as theirs to keep and permanent. Therefore be sure purchased items are available in all instances of your app running on all the devices the user owns, even after your app is deleted from a device, reinstalled, or downloaded to a new device. To restore purchased items on a new device or after your app is reinstalled using the Store Kit framework, your application simply calls the payment queue's `restoreCompletedTransactions` method. A transaction will be created and delivered for each already purchased item which you'll process similarly to that of a new payment request.

Consumable items are the one exception to the requirement that your content be available on all the user's devices. Consumable items are digital items that are used up or disappear after use and can never be reused. Examples of consumable items include virtual poker chips, in-game ammunition, or virtual supplies such as construction materials.

If you offer consumable digital items in your In-App Purchase store, it's required that you mark them as consumable when they are submitted via iTunes Connect and vitally important that you describe the transient nature of these items in your item's description. Consumable items will not be included in the list of transactions returned after the Store Kit `restoreCompletedTransactions` method is called.

You may choose one of the following ways to deliver digital content to users:

- Package the content with your app binary and enable it when the user makes a purchase.
- Download the content from your servers for use by your app when the user makes a purchase.
- For non-consumable purchases, you may host the content on Apple's server for later downloading to your app.

Digital content is typically Non-Consumable unless the content is expected to be used only once in which case it would be Consumable. Here are some examples of digital content and what purchase type would be applicable:

Example Content	Allowed	Purchase Type
Buy a digital book	✓	Non-Consumable
Buy virtual poker chips for use within a single app	✓	Consumable
VoIP minutes, U.S.A to Germany	✓	Consumable
Buy an item for in-game use	✓	Consumable if single use, otherwise Non-Consumable

Here are additional examples of content that would not be allowed with details about why they are not allowable:

Example Content	Allowed	Why Is This Not Allowed?
Buy a physical book	X	Physical items cannot be purchased
Buy virtual poker chips for use in multiple apps	X	Items can only be used in the app where the purchase is made

## Functionality

You may sell and unlock additional functionality within your application using In-App Purchase.

Adding additional functionality to an app should generally be considered Non-Consumable. Here are some examples of allowable additional functionality you might consider offering:

Example Added Functionality	Allowed	Purchase Type
Access to more game levels	✓	Non-Consumable
Ability to save	✓	Non-Consumable
Ability to manage more than one travel itinerary	✓	Non-Consumable

## Services

In-App Purchase also gives you a way to sell digital services within your application.

Digital services are usually either Non-Consumable or should be a Non-Renewing Subscription. The differentiation would be whether access to the service is limited to a specific time period. Here are some examples of services you might consider offering, and whether they are allowed:

Example Service	Allowed	Purchase Type
Six month access to business card scan services	✓	Auto-Renewable Subscription
Voice transcription (no time restriction)	✓	Non-Consumable
One year of VoIP telephone service	✓	Non-Renewing Subscription

Here are additional examples of services that would not be allowed with details about why they are not allowable:

Example Service	Allowed	Why Is This Not Allowed?
Plumbing repair service	X	Real-world services cannot be purchased
Courier delivery	X	Real-world services cannot be purchased
Web design services	X	Real-world services cannot be purchased

## Subscriptions

Subscriptions and subscription renewals to content or services can be offered to customers for purchase.

Renewal of an Auto-Renewing Subscription is handled automatically by the App Store. The user will be reminded shortly before their subscription is about to renew and all the billing is handled automatically by the App Store. Users can easily change their renewal frequency and can opt-out of the renewal by turning off the Auto-Renew switch at least 24 hours before the end of the current subscription period.

For Non-Renewing Subscriptions, if you want to allow users to renew their subscription, your application must track the expiration manually. If the user chooses to renew their subscription you have to initiate a new Store Kit purchase request. Tracking of the expiration date of initial or renewed subscriptions is not handled by the App Store and is your responsibility. Additionally, your application must include a mechanism to deliver the purchased Non-Renewing Subscription In App Purchase to all iOS devices owned by a single user.

Here are some examples of allowable subscriptions and what purchase type they would be:

Example Subscription	Allowed	Purchase Type
Auto-Renewing Subscription to daily digital newspaper	✓	Auto-Renewable Subscription
Auto-Renewing Subscription to live TV streaming service	✓	Auto-Renewable Subscription
Subscription to monthly voice-guidance service	✓	Non-Renewing Subscription

And some examples of subscriptions that would not be allowed:

Example Subscription	Allowed	Why Is This Not Allowed?
Auto-Renewing subscription to monthly voice-guidance service	X	Content is not episodic in nature (use Non-Renewing instead)
Gym membership renewal	X	Subscription to non-digital service
Free subscription to provide preview of magazine issues	X	Free subscriptions cannot be used to provide previews of full content

## Restoring Previous Completed Purchases

As described above, the different In-App Purchase types have different requirements for whether previous purchases must be restored to users devices. This table summarizes the requirements and what support Store Kit provides for tracking the previous purchases:

In-App Purchase Type	Restore Required?	Transaction Restoration Mechanism
Consumable	No	Your server may track purchases and allow user to restore
Non-Consumable	Yes	Use Store Kit's <code>restoreCompletedTransactions</code> method
Non-Renewing Subscriptions	Yes	Use iCloud or your own server to track purchases and allow user to restore purchased subscriptions to all iOS devices owned by a single user
Auto-Renewing Subscriptions	Yes	Use Store Kit's <code>restoreCompletedTransactions</code> method
Free Subscriptions	Yes	Use Store Kit's <code>restoreCompletedTransactions</code> method

## Defining Your In-App Purchase Store

After you have decided what type of items you're going to provide for In-App Purchase, proceed by writing clear item descriptions, picking appropriate pricing, and designing an In-App Purchase store to showcase your items.

## Item Descriptions

While the Store Kit framework provides the functionality to process payments via the App Store, it's up to your app to display what's available for purchase. Spend some time crafting item descriptions that accurately describe what each item and how the item is used within your app.

Be clear about:

- How an item can be used
- What's included in the item
- What time period is covered by a subscription, subscription renewal, or service (when applicable)
- Whether an item is consumable or not (unless you specify otherwise, users expect items to be re-usable, re-downloadable, and permanent)
- Use a consistent item-naming convention for readability and differentiation of similar items.

Since your application may be available in App Stores with a region specific currency and language, your item's localized description and pricing information should be pulled from the App Store via Store Kit's products request API. You'll use the information returned from the products request to populate the user interface you present to the customer for item selection and purchase.

## Item Pricing

Before you settle on a price for an item, think about how much users might be comfortable paying, considering:

- How frequently they use the item
- How the item is used within your application
- What the non-digital equivalent of the item might cost

Use consistent pricing for similar types of items. In some cases, items might cost more than the initial purchase price of your application. For example, if you sell an app that allows users to subscribe to various digital magazines, a one-year subscription to a magazine might cost more than your app. Users will understand that, for the subscription price, they get:

- A number of issues of their favorite digital magazine
- Reliable delivery of content
- The convenience of digital content that can accompany them wherever they go

## Designing Your In-App Purchase Store

Your In-App Purchase store should be attractive, easy to understand, and simple to use.

Follow these design guidelines to help you meet this goal:

- Always display the name and cost of each item.
- Allow users to view a detailed description for each item.
- Group related items according to type.

- Ensure easy navigation through large catalogs of items. Avoid a long single list of items that requires users to scroll and scroll.
- Always indicate when items are consumable.
- Ensure that users have to be very intentional about purchasing an item and that the purchase process can't be started by accident.
- Provide a "Check Inventory" button that allows users to check for items they might be missing or that they've already purchased on another device. Keep in mind that automatically initiating a restore of previous purchases (which will prompt the user for their iTunes Store password) may be confusing to your users.

## Submitting Catalog Items to iTunes Connect

Every item that you plan to offer for purchase within your app must be submitted to the App Store through iTunes Connect. When you submit an item, you specify its name, description, pricing, a preview image, and other details, such as localized versions of the item name and description.

Every item must also have a product identifier that is associated with your application and uniquely identifies an item sold. Your application uses this product id to fetch localized item descriptions and pricing information from the App Store and to request payments.

Your app's rating must take into account the ratings for new or changed items. If your app's rating decreases it must be re-approved for sale on the App Store.

## App and Catalog Item Updates

Updates to applications for bug fixes or new functionality, and updates or new items for purchase, are bound by the same guidelines outlined in this article.

## Document Revision History

Date	Notes
2013-02-23	Added details about hosted content. Updated examples of Auto-Renewable Subscriptions
2012-03-16	Updated to include Mac OS X support. Details about Non-Renewing Subscriptions.

*Nothing herein is intended to modify the iOS Developer Program License Agreement, Mac Developer Program License Agreement, the iOS Developer Program Enterprise License Agreement, the iOS Developer Program University Agreement, the iOS Developer Program University Student License Agreement ("Agreement") and/or the App Store Review Guidelines, as they may be modified by Apple from time to time. In the event of any conflict or inconsistency between the Agreement or Guidelines and this document, the Agreement or Guidelines shall govern. Apple may at any time, and from time to time, with or without prior notice to You modify this document as well as any features, functionality or services described herein. You understand that any such modifications may require You to change or update Your Applications at Your own cost. Apple shall not be liable for any losses, damages or costs of any kind incurred by You or any other party arising out of or related to any modification or discontinuation of this document or any of the features, functionality or services described here.*

# **EXHIBIT 7**

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STEVE CARELL  
TONI COLLETTE

February 1, 2011

# Apple Moves to Tighten Control of App Store

By **CLAIRE CAIN MILLER** and **MIGUEL HELFT**

SAN FRANCISCO — [Apple](#) is further tightening its control of the App Store.

Some application developers, including [Sony](#), say Apple has told them they can no longer sell e-books within their apps unless the transactions go through Apple's system. Apple rejected Sony's [iPhone](#) application, which would have let people buy and read e-books from the Sony Reader Store.

Apple said on Tuesday that it was still allowing customers to read e-books they bought elsewhere within apps. For example, a Sony app could still access books the customer bought earlier from Sony's store.

But Steve Haber, president of Sony's digital reading division, said on Monday that Apple had told his company that from now on, all in-app purchases would have to go through Apple.

"It's the opposite of what we wanted to bring to the market," Mr. Haber said. "We always wanted to bring the content to as many devices as possible, not one device to one store."

Apps like the [Kindle](#) app from [Amazon.com](#) and the one that Sony submitted open up a browser window when a user wants to buy something. This allows the app makers to argue that technically the purchase is happening on the Web, not within the app.

Apple is now saying the app makers must allow those purchases to happen within the app, not in a separate browser window, with Apple getting its standard 30 percent cut of the transaction. At the moment this applies only to e-book purchases.

"We have not changed our developer terms or guidelines," Trudy Muller, an Apple spokeswoman, said Tuesday. "We are now requiring that if an app offers customers the ability to purchase books outside of the app, that the same option is also available to customers from within the app with in-app purchase."

The requirement may signal a shift for Apple. The company has made more money selling hardware than music, e-books or apps. If people could have access to more content from more sources on their iPhones and iPads, the thinking went, then they would buy more devices.

The move is also surprising, as Apple has indicated recently that it would be more collaborative, not less, with magazine publishers and other content producers that want more control over how to distribute content on the iPad.

“This sudden shift perhaps tells you something about Apple’s understanding of the value of its platform,” said James L. McQuivey, a consumer electronics analyst at Forrester Research. “Apple started making money with devices. Maybe the new thing that everyone recognizes is the unit of economic value is the platform, not the device.”

*This article has been revised to reflect the following correction:*

***Correction: February 3, 2011***

*An article on Tuesday about Apple’s tightening of its control of the App Store misstated part of its policy. While the company is requiring e-book purchases within apps to go through its payment system, customers can still use apps to access e-books and other content they bought elsewhere. It is not the case that access to that content will be cut off.*

# **EXHIBIT 8**

- Sign in with

CNET Reviews

## What Apple's latest rules change means for Kindle, Nook, and Kobo e-reader apps

Apple's recent tweak to its in-app subscription rules has big implications for e-reader apps. What's it all mean?

by [David Carnoy](#) June 9, 2011 3:53 PM PDT



With Apple's latest rules change, it now looks like e-reading apps won't have to be removed from the App Store.

(Credit: Screenshot by David Carnoy/CNET)

Apple giveth and Apple taketh away.

Today, Apple decided to give a little, as it made some [significant tweaks](#) to its in-app subscription rules that impact the fate of e-reader apps.

Apple had reportedly set a deadline of June 30 for developers to alter their apps to reflect the new terms for subscriptions in the Apple Store, which required companies to give Apple a 30 percent cut on sales their apps generate.

In the past, e-reading apps [Kindle](#), Nook, and Kobo have avoided paying the cut by sending customers to a Web-based interface outside the app. When Apple issued its [App Store subscription rules](#) last February, however, it made conditions far stricter. The company would *require* third-party developers to sell any available content from within the app--sales from which siphon Apple's standard 30 percent commission that it was otherwise not receiving from the Web-based purchases. Moreover, the vendors couldn't raise the in-app version of the price to help defer the money they'd now owe to Apple--the rules further stipulated that the in-app price must be at "the same price or less than it is offered outside the app."

In other words, the vendor--Amazon, Barnes & Noble, and so forth--would need to sacrifice 30 percent of all sales (and subscription) transactions, effectively requiring them to sell at a loss. (The February changes were due to take effect on June 30.)

As one [angry developer](#) of the iFlow Reader app noted as his company went out of business, Apple's new rules were impossible to comply with for many companies and that Apple was basically sending an "eviction notice" to digital book sellers.

However, Apple's latest amendment to its in-app subscription rules appears to have loosened the noose up while still choking off sales.

Let's start with the old rules:

**11.13** Apps can read or play approved content (magazines, newspapers, books, audio, music, video) that is sold outside of the app, for which Apple will not receive any portion of the revenues, provided that the same content is also offered in the app using IAP [in-app purchase] at the same price or less than it is offered outside the app. This applies to both purchased content and subscriptions.

Now here are the new updated rules:

**11.13** Apps that link to external mechanisms for purchases or subscriptions to be used in the app, such as a "buy" button that goes to a web site to purchase a digital book, will be rejected.

**11.14** Apps can read or play approved content (specifically magazines, newspapers, books, audio, music, and video) that is subscribed to or purchased outside of the app, as long as there is no button or external link in the app to purchase the approved content. Apple will not receive any portion of the revenues for approved content that is subscribed to or purchased outside of the app.

As it stands, you currently can't buy e-books from the Kindle, Nook, and Kobo apps, anyway. Instead, they have a single "shop for books" button that boots up the [Safari](#) Web browser, where you can purchase what you please from Amazon, Barnes & Noble, and Kobo.

According to the new rules, that shopping button will no longer exist. In other words, there can't be any link out to a non-Apple store on the Web. You will, however, be able to read any e-books that you've purchased directly from those e-bookstores.

Translation: The Kindle, Nook, and Kobo apps will simply become e-reading apps that will allow you to sync your digital libraries across devices.



It looks like the 'Shop in the Kindle Store' button will be going away in both the iPad and iPhone Kindle apps.

(Credit: Screenshot by David Carnoy/CNET)

Using the Kindle app and [iPad](#) as an example, now instead of accessing the Kindle Store by clicking the "Shop in Kindle Store" in the top right corner of the home page in the app, you'll have to manually open the Safari browser, buy an e-book, then return to the Kindle app to retrieve that purchase by resyncing your account. It's one extra step, but not the end of the world.

When you buy an e-book in the Kindle Store online (on Amazon's Web site) from your computer, you're given the choice of sending the e-book to whatever Kindle-enabled device you've linked to your Amazon account. One would think that you'd still be able to send content to, say, your iPad, but we haven't been able to confirm that with Amazon. (We put out e-mails to all three companies but have yet to hear back about the rules change and what it means to their apps).

The long and short of it is while you can expect some changes (we don't know exactly when those changes will happen, but as we said, Apple's original deadline was June 30), if you use an e-reader app on your iOS device, you'll be able to continue accessing your library and presumably update it. But it also appears that Apple's iBooks will be the only e-reader app that will have shopping links in the app.

Can this all change tomorrow? Sure. Apple could go ahead and update its rules again. And there's little bit of ambiguity in the phrase, "Apps can read or play approved content," which leaves the door open for Apple to reject certain content for failing to living up to Apple's rules.

For now, though, it seems that at least Apple has softened up just enough to avert what probably would have resulted in serious backlash from its users.



## [David Carnoy](#)

Executive Editor David Carnoy has been a leading member of CNET's Reviews team since 2000. He covers the gamut of gadgets and is a notable e-reader and e-publishing expert. He's also the author of the

novels [Knife Music](#) and [The Big Exit](#). Both titles are available as [Kindle](#), [iBooks](#), and [Nook](#) e-books.



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# **EXHIBIT 9**

# App Store Review Guidelines

## Introduction

We're pleased that you want to invest your talents and time to develop applications for iOS. It has been a rewarding experience – both professionally and financially – for tens of thousands of developers and we want to help you join this successful group. We have published our App Store Review Guidelines in the hope that they will help you steer clear of issues as you develop your app and speed you through the approval process when you submit it.

We view Apps different than books or songs, which we do not curate. If you want to criticize a religion, write a book. If you want to describe sex, write a book or a song, or create a medical app. It can get complicated, but we have decided to not allow certain kinds of content in the App Store. It may help to keep some of our broader themes in mind:

- We have lots of kids downloading lots of apps, and parental controls don't work unless the parents set them up (many don't). So know that we're keeping an eye out for the kids.
- We have over 350,000 apps in the App Store. We don't need any more Fart apps. If your app doesn't do something useful or provide some form of lasting entertainment, it may not be accepted.
- If your App looks like it was cobbled together in a few days, or you're trying to get your first practice App into the store to impress your friends, please brace yourself for rejection. We have lots of serious developers who don't want their quality Apps to be surrounded by amateur hour.
- We will reject Apps for any content or behavior that we believe is over the line. What line, you ask? Well, as a Supreme Court Justice once said, "I'll know it when I see it". And we think that you will also know it when you cross it.
- If your app is rejected, we have a Review Board that you can appeal to. If you run to the press and trash us, it never helps.
- If you attempt to cheat the system (for example, by trying to trick the review process, steal data from users, copy another developer's work, or manipulate the ratings) your apps will be removed from the store and you will be expelled from the developer program.
- This is a living document, and new apps presenting new questions may result in new rules at any time. Perhaps your app will trigger this.

Lastly, we love this stuff too, and honor what you do. We're really trying our best to create the best platform in the world for you to express your talents and make a living too. If it sounds like we're control freaks, well, maybe it's because we're so committed to our users and making sure they have a quality experience with our products. Just like almost all of you are too.

## Table of Contents

1. Terms and conditions
2. Functionality
3. Metadata, ratings and rankings
4. Location
5. Push notifications
6. Game Center
7. iAds
8. Trademarks and trade dress

9. Media content
10. User interface
11. Purchasing and currencies
12. Scraping and aggregation
13. Damage to device
14. Personal attacks
15. Violence
16. Objectionable content
17. Privacy
18. Pornography
19. Religion, culture, and ethnicity
20. Contests, sweepstakes, lotteries, and raffles
21. Charities and contributions
22. Legal requirements

## 1. Terms and conditions

- 1.1 As a developer of applications for the App Store you are bound by the terms of the Program License Agreement (PLA), Human Interface Guidelines (HIG), and any other licenses or contracts between you and Apple. The following rules and examples are intended to assist you in gaining acceptance for your app in the App Store, not to amend or remove provisions from any other agreement.

## 2. Functionality

- 2.1 Apps that crash will be rejected
- 2.2 Apps that exhibit bugs will be rejected
- 2.3 Apps that do not perform as advertised by the developer will be rejected
- 2.4 Apps that include undocumented or hidden features inconsistent with the description of the app will be rejected
- 2.5 Apps that use non-public APIs will be rejected
- 2.6 Apps that read or write data outside its designated container area will be rejected
- 2.7 Apps that download code in any way or form will be rejected
- 2.8 Apps that install or launch other executable code will be rejected
- 2.9 Apps that are "beta", "demo", "trial", or "test" versions will be rejected
- 2.10 iPhone apps must also run on iPad without modification, at iPhone resolution, and at 2X iPhone 3GS resolution
- 2.11 Apps that duplicate apps already in the App Store may be rejected, particularly if there are many of them, such as fart, burp, flashlight, and Kama Sutra apps.
- 2.12 Apps that are not very useful, are simply web sites bundled as apps, or do not provide any lasting entertainment value may be rejected
- 2.13 Apps that are primarily marketing materials or advertisements will be rejected
- 2.14 Apps that are intended to provide trick or fake functionality that are not clearly marked as such will be rejected
- 2.15 Apps larger than 20MB in size will not download over cellular networks (this is automatically prohibited by the App Store)
- 2.16 Multitasking apps may only use background services for their intended purposes: VoIP, audio playback, location, task completion, local notifications, etc.
- 2.17 Apps that browse the web must use the iOS WebKit framework and WebKit Javascript
- 2.18 Apps that encourage excessive consumption of alcohol or illegal substances, or encourage minors to consume alcohol or smoke cigarettes, will be rejected
- 2.19 Apps that provide incorrect diagnostic or other inaccurate device data will be rejected
- 2.20 Developers "spamming" the App Store with many versions of similar apps will be removed from

the iOS Developer Program

- 2.21 Apps that are simply a song or movie should be submitted to the iTunes store. Apps that are simply a book should be submitted to the iBookstore.
- 2.22 Apps that arbitrarily restrict which users may use the app, such as by location or carrier, may be rejected

### 3. Metadata (name, descriptions, ratings, rankings, etc)

- 3.1 Apps or metadata that mentions the name of any other mobile platform will be rejected
- 3.2 Apps with placeholder text will be rejected
- 3.3 Apps with descriptions not relevant to the application content and functionality will be rejected
- 3.4 App names in iTunes Connect and as displayed on a device should be similar, so as not to cause confusion
- 3.5 Small and large app icons should be similar, so as to not to cause confusion
- 3.6 Apps with app icons and screenshots that do not adhere to the 4+ age rating will be rejected
- 3.7 Apps with Category and Genre selections that are not appropriate for the app content will be rejected
- 3.8 Developers are responsible for assigning appropriate ratings to their apps. Inappropriate ratings may be changed/deleted by Apple
- 3.9 Developers are responsible for assigning appropriate keywords for their apps. Inappropriate keywords may be changed/deleted by Apple
- 3.10 Developers who attempt to manipulate or cheat the user reviews or chart ranking in the App Store with fake or paid reviews, or any other inappropriate methods will be removed from the iOS Developer Program
- 3.11 Apps which recommend that users restart their iOS device prior to installation or launch may be rejected
- 3.12 Apps should have all included URLs fully functional when you submit it for review, such as support and privacy policy URLs

### 4. Location

- 4.1 Apps that do not notify and obtain user consent before collecting, transmitting, or using location data will be rejected
- 4.2 Apps that use location-based APIs for automatic or autonomous control of vehicles, aircraft, or other devices will be rejected
- 4.3 Apps that use location-based APIs for dispatch, fleet management, or emergency services will be rejected
- 4.4 Location data can only be used when directly relevant to the features and services provided by the app to the user or to support approved advertising uses

### 5. Push notifications

- 5.1 Apps that provide Push Notifications without using the Apple Push Notification (APN) API will be rejected
- 5.2 Apps that use the APN service without obtaining a Push Application ID from Apple will be rejected
- 5.3 Apps that send Push Notifications without first obtaining user consent will be rejected
- 5.4 Apps that send sensitive personal or confidential information using Push Notifications will be rejected
- 5.5 Apps that use Push Notifications to send unsolicited messages, or for the purpose of phishing or spamming will be rejected
- 5.6 Apps cannot use Push Notifications to send advertising, promotions, or direct marketing of any kind
- 5.7 Apps cannot charge users for use of Push Notifications

- 5.8 Apps that excessively use the network capacity or bandwidth of the APN service or unduly burden a device with Push Notifications will be rejected
- 5.9 Apps that transmit viruses, files, computer code, or programs that may harm or disrupt the normal operation of the APN service will be rejected

## 6. Game Center

- 6.1 Apps that display any Player ID to end users or any third party will be rejected
- 6.2 Apps that use Player IDs for any use other than as approved by the Game Center terms will be rejected
- 6.3 Developers that attempt to reverse lookup, trace, relate, associate, mine, harvest, or otherwise exploit Player IDs, alias, or other information obtained through the Game Center will be removed from the iOS Developer Program
- 6.4 Game Center information, such as Leaderboard scores, may only be used in apps approved for use with the Game Center
- 6.5 Apps that use Game Center service to send unsolicited messages, or for the purpose of phishing or spamming will be rejected
- 6.6 Apps that excessively use the network capacity or bandwidth of the Game Center will be rejected
- 6.7 Apps that transmit viruses, files, computer code, or programs that may harm or disrupt the normal operation of the Game Center service will be rejected

## 7. iAds

- 7.1 Apps that artificially increase the number of impressions or click-throughs of ads will be rejected
- 7.2 Apps that contain empty iAd banners will be rejected
- 7.3 Apps that are designed predominantly for the display of ads will be rejected

## 8. Trademarks and trade dress

- 8.1 Apps must comply with all terms and conditions explained in the Guidelines for Using Apple Trademarks and Copyrights and the Apple Trademark List
- 8.2 Apps that suggest or infer that Apple is a source or supplier of the app, or that Apple endorses any particular representation regarding quality or functionality will be rejected
- 8.3 Apps which appear confusingly similar to an existing Apple product or advertising theme will be rejected
- 8.4 Apps that misspell Apple product names in their app name (i.e., GPS for Iphone, iTunz) will be rejected
- 8.5 Use of protected 3rd party material (trademarks, copyrights, trade secrets, otherwise proprietary content) requires a documented rights check which must be provided upon request
- 8.6 Google Maps and Google Earth images obtained via the Google Maps API can be used within an application if all brand features of the original content remain unaltered and fully visible. Apps that cover up or modify the Google logo or copyright holders identification will be rejected

## 9. Media content

- 9.1 Apps that do not use the MediaPlayer framework to access media in the Music Library will be rejected
- 9.2 App user interfaces that mimic any iPod interface will be rejected
- 9.3 Audio streaming content over a cellular network may not use more than 5MB over 5 minutes
- 9.4 Video streaming content over a cellular network longer than 10 minutes must use HTTP Live Streaming and include a baseline 64 kbps audio-only HTTP Live stream

## 10. User interface

- 10.1 Apps must comply with all terms and conditions explained in the Apple iOS Human Interface Guidelines
- 10.2 Apps that look similar to apps bundled on the iPhone, including the App Store, iTunes Store, and iBookstore, will be rejected
- 10.3 Apps that do not use system provided items, such as buttons and icons, correctly and as described in the Apple iOS Human Interface Guidelines may be rejected
- 10.4 Apps that create alternate desktop/home screen environments or simulate multi-app widget experiences will be rejected
- 10.5 Apps that alter the functions of standard switches, such as the Volume Up/Down and Ring/Silent switches, will be rejected
- 10.6 Apple and our customers place a high value on simple, refined, creative, well thought through interfaces. They take more work but are worth it. Apple sets a high bar. If your user interface is complex or less than very good, it may be rejected

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- 11.1 Apps that unlock or enable additional features or functionality with mechanisms other than the App Store will be rejected
- 11.2 Apps utilizing a system other than the In App Purchase API (IAP) to purchase content, functionality, or services in an app will be rejected
- 11.3 Apps using IAP to purchase physical goods or goods and services used outside of the application will be rejected
- 11.4 Apps that use IAP to purchase credits or other currencies must consume those credits within the application
- 11.5 Apps that use IAP to purchase credits or other currencies that expire will be rejected
- 11.6 Content subscriptions using IAP must last a minimum of 7 days and be available to the user from all of their iOS devices
- 11.7 Apps that use IAP to purchase items must assign the correct Purchasability type
- 11.8 Apps that use IAP to purchase access to built-in capabilities provided by iOS, such as the camera or the gyroscope, will be rejected
- 11.9 Apps containing "rental" content or services that expire after a limited time will be rejected
- 11.10 Insurance applications must be free, in legal-compliance in the regions distributed, and cannot use IAP
- 11.11 In general, the more expensive your app, the more thoroughly we will review it
- 11.12 Apps offering subscriptions must do so using IAP, Apple will share the same 70/30 revenue split with developers for these purchases, as set forth in the Developer Program License Agreement.
- 11.13 Apps that link to external mechanisms for purchases or subscriptions to be used in the app, such as a "buy" button that goes to a web site to purchase a digital book, will be rejected
- 11.14 Apps can read or play approved content (specifically magazines, newspapers, books, audio, music, and video) that is subscribed to or purchased outside of the app, as long as there is no button or external link in the app to purchase the approved content. Apple will not receive any portion of the revenues for approved content that is subscribed to or purchased outside of the app

## 12. Scraping and aggregation

- 12.1 Applications that scrape any information from Apple sites (for example from apple.com, iTunes Store, App Store, iTunes Connect, Apple Developer Programs, etc) or create rankings using content from Apple sites and services will be rejected
- 12.2 Applications may use approved Apple RSS feeds such as the iTunes Store RSS feed
- 12.3 Apps that are simply web clippings, content aggregators, or a collection of links, may be rejected

## 13. Damage to device

- 13.1 Apps that encourage users to use an Apple Device in a way that may cause damage to the device will be rejected
- 13.2 Apps that rapidly drain the device's battery or generate excessive heat will be rejected

#### 14. Personal attacks

- 14.1 Any app that is defamatory, offensive, mean-spirited, or likely to place the targeted individual or group in harms way will be rejected
- 14.2 Professional political satirists and humorists are exempt from the ban on offensive or mean-spirited commentary

#### 15. Violence

- 15.1 Apps portraying realistic images of people or animals being killed or maimed, shot, stabbed, tortured or injured will be rejected
- 15.2 Apps that depict violence or abuse of children will be rejected
- 15.3 "Enemies" within the context of a game cannot solely target a specific race, culture, a real government or corporation, or any other real entity
- 15.4 Apps involving realistic depictions of weapons in such a way as to encourage illegal or reckless use of such weapons will be rejected
- 15.5 Apps that include games of Russian roulette will be rejected

#### 16. Objectionable content

- 16.1 Apps that present excessively objectionable or crude content will be rejected
- 16.2 Apps that are primarily designed to upset or disgust users will be rejected

#### 17. Privacy

- 17.1 Apps cannot transmit data about a user without obtaining the user's prior permission and providing the user with access to information about how and where the data will be used
- 17.2 Apps that require users to share personal information, such as email address and date of birth, in order to function will be rejected
- 17.3 Apps that target minors for data collection will be rejected

#### 18. Pornography

- 18.1 Apps containing pornographic material, defined by Webster's Dictionary as "explicit descriptions or displays of sexual organs or activities intended to stimulate erotic rather than aesthetic or emotional feelings", will be rejected
- 18.2 Apps that contain user generated content that is frequently pornographic (ex "Chat Roulette" apps) will be rejected

#### 19. Religion, culture, and ethnicity

- 19.1 Apps containing references or commentary about a religious, cultural or ethnic group that are defamatory, offensive, mean-spirited or likely to expose the targeted group to harm or violence will be rejected
- 19.2 Apps may contain or quote religious text provided the quotes or translations are accurate and not misleading. Commentary should be educational or informative rather than inflammatory

#### 20. Contests, sweepstakes, lotteries, and raffles

- 20.1 Sweepstakes and contests must be sponsored by the developer/company of the app

- 20.2 Official rules for sweepstakes and contests, must be presented in the app and make it clear that Apple is not a sponsor or involved in the activity in any manner
- 20.3 It must be permissible by law for the developer to run a lottery app, and a lottery app must have all of the following characteristics: consideration, chance, and a prize
- 20.4 Apps that allow a user to directly purchase a lottery or raffle ticket in the app will be rejected

## 21. Charities and contributions

- 21.1 Apps that include the ability to make donations to recognized charitable organizations must be free
- 21.2 The collection of donations must be done via a web site in Safari or an SMS

## 22. Legal requirements

- 22.1 Apps must comply with all legal requirements in any location where they are made available to users. It is the developer's obligation to understand and conform to all local laws
- 22.2 Apps that contain false, fraudulent or misleading representations will be rejected
- 22.3 Apps that solicit, promote, or encourage criminal or clearly reckless behavior will be rejected
- 22.4 Apps that enable illegal file sharing will be rejected
- 22.5 Apps that are designed for use as illegal gambling aids, including card counters, will be rejected
- 22.6 Apps that enable anonymous or prank phone calls or SMS/MMS messaging will be rejected
- 22.7 Developers who create apps that surreptitiously attempt to discover user passwords or other private user data will be removed from the iOS Developer Program
- 22.8 Apps which contain DUI checkpoints that are not published by law enforcement agencies, or encourage and enable drunk driving, will be rejected

## Living document

This document represents our best efforts to share how we review apps submitted to the App Store, and we hope it is a helpful guide as you develop and submit your apps. It is a living document that will evolve as we are presented with new apps and situations, and we'll update it periodically to reflect these changes.

Thank you for developing for iOS. Even though this document is a formidable list of what not to do, please also keep in mind the much shorter list of what you must do. Above all else, join us in trying to surprise and delight users. Show them their world in innovative ways, and let them interact with it like never before. In our experience, users really respond to polish, both in functionality and user interface. Go the extra mile. Give them more than they expect. And take them places where they have never been before. We are ready to help.

© Apple, 2011

# **EXHIBIT 10**

# App Store Review Guidelines

## Introduction

We're thrilled that you want to invest your talents and time to develop applications for iOS. It has been a rewarding experience – both professionally and financially – for tens of thousands of developers and we want to help you join this successful group. This is the first time we have published our App Store Review Guidelines. We hope they will help you steer clear of issues as you develop your app, so that it speeds through the approval process when you submit it.

We view Apps different than books or songs, which we do not curate. If you want to criticize a religion, write a book. If you want to describe sex, write a book or a song, or create a medical app. It can get complicated, but we have decided to not allow certain kinds of content in the App Store. It may help to keep some of our broader themes in mind:

- We have lots of kids downloading lots of apps, and parental controls don't work unless the parents set them up (many don't). So know that we're keeping an eye out for the kids.
- We have over 250,000 apps in the App Store. We don't need any more Fart apps. If your app doesn't do something useful or provide some form of lasting entertainment, it may not be accepted.
- If your App looks like it was cobbled together in a few days, or you're trying to get your first practice App into the store to impress your friends, please brace yourself for rejection. We have lots of serious developers who don't want their quality Apps to be surrounded by amateur hour.
- We will reject Apps for any content or behavior that we believe is over the line. What line, you ask? Well, as a Supreme Court Justice once said, "I'll know it when I see it". And we think that you will also know it when you cross it.
- If your app is rejected, we have a Review Board that you can appeal to. If you run to the press and trash us, it never helps.
- This is a living document, and new apps presenting new questions may result in new rules at any time. Perhaps your app will trigger this.

Lastly, we love this stuff too, and honor what you do. We're really trying our best to create the best platform in the world for you to express your talents and make a living too. If it sounds like we're control freaks, well, maybe it's because we're so committed to our users and making sure they have a quality experience with our products. Just like almost all of you are too.

## Table of Contents

1. Terms and conditions
2. Functionality
3. Metadata, ratings and rankings
4. Location
5. Push notifications
6. Game Center
7. iAds
8. Trademarks and trade dress
9. Media content
10. User interface
11. Purchasing and currencies
12. Scraping and aggregation
13. Damage to device
14. Personal attacks
15. Violence
16. Objectionable content
17. Privacy
18. Pornography
19. Religion, culture, and ethnicity
20. Contests, sweepstakes, lotteries, and raffles
21. Charities and contributions
22. Legal requirements

### 1. Terms and conditions

#### 1 1.1

As a developer of applications for the App Store you are bound by the terms of the [Program License Agreement \(PLA\)](#), Human Interface Guidelines (HIG), and any other licenses or contracts between you and Apple. The following rules and examples are intended to assist you in gaining acceptance for your app in the App Store, not to amend or remove provisions from any other agreement.

### 2. Functionality

#### 2.1 Apps that crash will be rejected

- 2.2 Apps that exhibit bugs will be rejected
- 2.3 Apps that do not perform as advertised by the developer will be rejected
- 2.4 Apps that include undocumented or hidden features inconsistent with the description of the app will be rejected
- 2.5 Apps that use non-public APIs will be rejected
- 2.6 Apps that read or write data outside its designated container area will be rejected
- 2.7 Apps that download code in any way or form will be rejected
- 2.8 Apps that install or launch other executable code will be rejected
- 2.9 Apps that are "beta", "demo", "trial", or "test" versions will be rejected
- 2.10 iPhone apps must also run on iPad without modification, at iPhone resolution, and at 2X iPhone 3GS resolution
- 2.11 Apps that duplicate apps already in the App Store may be rejected, particularly if there are many of them
- 2.12 Apps that are not very useful or do not provide any lasting entertainment value may be rejected
- 2.13 Apps that are primarily marketing materials or advertisements will be rejected
- 2.14 Apps that are intended to provide trick or fake functionality that are not clearly marked as such will be rejected
- 2.15 Apps larger than 20MB in size will not download over cellular networks (this is automatically prohibited by the App Store)
- 2.16 Multitasking apps may only use background services for their intended purposes: VoIP, audio playback, location, task completion, local notifications, etc
- 2.17 Apps that browse the web must use the iOS WebKit framework and WebKit Javascript
- 2.18 Apps that encourage excessive consumption of alcohol or illegal substances, or encourage minors to consume alcohol or smoke cigarettes, will be rejected
- 2.19 Apps that provide incorrect diagnostic or other inaccurate device data will be rejected
- 2.20 Developers "spamming" the App Store with many versions of similar apps will be removed from the iOS Developer Program

### **3. Metadata (name, descriptions, ratings, rankings, etc)**

- 3.1 Apps with metadata that mentions the name of any other mobile platform will be rejected
- 3.2 Apps with placeholder text will be rejected
- 3.3 Apps with descriptions not relevant to the application content and functionality will be rejected
- 3.4 App names in iTunes Connect and as displayed on a device should be similar, so as not to cause confusion
- 3.5 Small and large app icons should be similar, so as to not to cause confusion
- 3.6 Apps with app icons and screenshots that do not adhere to the 4+ age rating will be rejected
- 3.7 Apps with Category and Genre selections that are not appropriate for the app content will be rejected
- 3.8 Developers are responsible for assigning appropriate ratings to their apps. Inappropriate ratings may be changed by Apple
- 3.9 Developers are responsible for assigning appropriate keywords for their apps. Inappropriate keywords may be changed/deleted by Apple
- 3.10 Developers who attempt to manipulate or cheat the user reviews or chart ranking in the App Store with fake or paid reviews, or any other inappropriate methods will be removed from the iOS Developer Program

## **4. Location**

- 4.1 Apps that do not notify and obtain user consent before collecting, transmitting, or using location data will be rejected
- 4.2 Apps that use location-based APIs for automatic or autonomous control of vehicles, aircraft, or other devices will be rejected
- 4.3 Apps that use location-based APIs for dispatch, fleet management, or emergency services will be rejected

## **5. Push notifications**

- 5.1 Apps that provide Push Notifications without using the Apple Push Notification (APN) API will be rejected
- 5.2 Apps that use the APN service without obtaining a Push Application ID from Apple will be rejected
- 5.3 Apps that send Push Notifications without first obtaining user consent will be rejected
- 5.4 Apps that send sensitive personal or confidential information using Push Notifications will be rejected

5.5 Apps that use Push Notifications to send unsolicited messages, or for the purpose of phishing or spamming will be rejected

5.6 Apps cannot use Push Notifications to send advertising, promotions, or direct marketing of any kind

5.7 Apps cannot charge users for use of Push Notifications

5.8 Apps that excessively use the network capacity or bandwidth of the APN service or unduly burden a device with Push Notifications will be rejected

5.9 Apps that transmit viruses, files, computer code, or programs that may harm or disrupt the normal operation of the APN service will be rejected

## **6. Game Center**

6.1 Apps that display any Player ID to end users or any third party will be rejected

6.2 Apps that use Player IDs for any use other than as approved by the Game Center terms will be rejected

6.3 Developers that attempt to reverse lookup, trace, relate, associate, mine, harvest, or otherwise exploit Player IDs, alias, or other information obtained through the Game Center will be removed from the iOS Developer Program

6.4 Game Center information, such as Leaderboard scores, may only be used in apps approved for use with the Game Center

6.5 Apps that use Game Center service to send unsolicited messages, or for the purpose of phishing or spamming will be rejected

6.6 Apps that excessively use the network capacity or bandwidth of the Game Center will be rejected

6.7 Apps that transmit viruses, files, computer code, or programs that may harm or disrupt the normal operation of the Game Center service will be rejected

## **7. iAds**

7.1 Apps that artificially increase the number of impressions or click-throughs of ads will be rejected

7.2 Apps that contain empty iAd banners will be rejected

7.3 Apps that are designed predominantly for the display of ads will be rejected

## **8. Trademarks and trade dress**

**8.1** Apps must comply with all terms and conditions explained in the [Guidelines for using Apple Trademark and Copyrights](#) and the [Apple Trademark List](#)

**8.2** Apps that suggest or infer that Apple is a source or supplier of the app, or that Apple endorses any particular representation regarding quality or functionality will be rejected

**8.3** Apps which appear confusingly similar to an existing Apple product or advertising theme will be rejected

**8.4** Apps that misspell Apple product names in their app name (i.e., GPS for Iphone, iTunz) will be rejected

**8.5** Use of protected 3rd party material (trademarks, copyrights, trade secrets, otherwise proprietary content) requires a documented rights check which must be provided upon request

**8.6** Google Maps and Google Earth images obtained via the Google Maps API can be used within an application if all brand features of the original content remain unaltered and fully visible. Apps that cover up or modify the Google logo or copyright holders identification will be rejected

## **9. Media content**

**9.1** Apps that do not use the MediaPlayer framework to access media in the Music Library will be rejected

**9.2** App user interfaces that mimic any iPod interface will be rejected

**9.3** Audio streaming content over a cellular network may not use more than 5MB over 5 minutes

**9.4** Video streaming content over a cellular network longer than 10 minutes must use HTTP Live Streaming and include a baseline 64 kbps audio-only HTTP Live stream

## **10. User interface**

**10.1** Apps must comply with all terms and conditions explained in the [Apple iPhone Human Interface Guidelines](#) and the [Apple iPad Human Interface Guidelines](#)

**10.2** Apps that look similar to apps bundled on the iPhone, including the App Store, iTunes Store, and iBookstore, will be rejected

**10.3** Apps that do not use system provided items, such as buttons and icons, correctly and as described in the [Apple iPhone Human Interface Guidelines](#) and the [Apple iPad Human Interface Guidelines](#) may be rejected

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**11.6** Content subscriptions using IAP must last a minimum of 30 days and be available to the user from all of their iOS devices

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**11.8** Apps that use IAP to purchase access to built-in capabilities provided by iOS, such as the camera or the gyroscope, will be rejected

**11.9** Apps containing "rental" content or services that expire after a limited time will be rejected

**11.10** Insurance applications must be free, in legal-compliance in the regions distributed, and cannot use IAP

**11.11** In general, the more expensive your app, the more thoroughly we will review it

## **12. Scraping and aggregation**

**12.1** Applications that scrape any information from Apple sites (for example from [apple.com](http://apple.com), iTunes Store, App Store, iTunes Connect, Apple Developer Programs, etc) or create rankings using content from Apple sites and services will be rejected

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© Apple, 2010

# **EXHIBIT 11**

**Subject:** Re: New Kindle App Ad  
**From:** Steve Jobs <sjobs@apple.com>  
**Received(Date):** Mon, 22 Nov 2010 20:34:09 -1000  
**Cc:** Cue Eddy <cue@apple.com>, Joswiak Greg <joz@apple.com>  
**To:** Philip Schiller <schiller@apple.com>

What do you recommend we do?

The first step might be to say they must use our payment system for everything, including books (triggered by the newspapers and magazines). If they want to compare us to Android, let's force them to use our far superior payment system. Thoughts?

Steve

Sent from my iPhone

On Nov 22, 2010, at 7:55 PM, Philip Schiller <schiller@apple.com> wrote:

> I just watched a new Amazon Kindle app ad on TV.

>

> It starts with a woman using an iPhone and buying and reading books with the Kindle app. The woman then switches to an Android phone and still can read all her books.

> While the primary message is that there are Kindle apps on lots of mobile devices, the secondary message that can't be missed is that it is easy to switch from iPhone to Android.

>

> Not fun to watch.

**Cc:** Cue Eddy <cue@apple.com>, Joswiak Greg <joz@apple.com>, Steve Jobs <sjobs@apple.com>  
**From:** Steve Jobs <sjobs@apple.com>  
**Subject:** Re: New Kindle App Ad  
**Received(Date):** Tue, 23 Nov 2010 08:10:58 -1000  
**To:** Philip Schiller <schiller@apple.com>

Phil - I agree with you here 100%. It's time for them to decide to use our payment mechanism or bow out.

And I think it's time to begin applying this uniformly except for existing subscriptions (but applying it for new ones).

Steve

Sent from my iPhone

On Nov 23, 2010, at 5:02 AM, Philip Schiller <schiller@apple.com> wrote:

> I found the TV advertisements on YouTube (link below). Interestingly, I also found that Amazon posted the reverse ad as well (the same woman switching from Android to iPhone).

>

> In both versions of the TV ad Amazon is demonstrating that users build vast libraries of Kindle books directly on their phones, which does in fact violate our published terms and guidelines. One reason we originally approved the exception for Amazon not using In App Purchase for a digital good or service was the expectation that users would often be buying books on a Kindle device and later accessing them on an iPhone. Amazon's early marketing of the Kindle app reflected that use pattern. A lot has changed since then. We have sold many more iPhones and iPod touch than they have Kindle devices, we have the iPad now as a reading device as well, and their marketing has changed to reflect that more often Kindle app users are purchasing digital books right on their phones.

>

> I do think that we should tell Amazon that based on their own TV ads it is clear that the use of their App now violates our terms and guidelines and that they need to use our In App Purchase system for digital book sales as well. We should ask them to come back to us with a plan on how they will get their app in compliance with the rules. Based on our past discussions I expect they will may choose not to do that. We would then likely have to decide whether to pull the Kindle app from the store or continue to allow an exception to our terms and guidelines for the Kindle app.

>

> Kindle switching to Android ad: <http://www.youtube.com/watch?v=gROe-7EQncU>

>

> Kindle switching to iPhone ad: <http://www.youtube.com/watch?v=L2x6046zzJ8>

>

>

> On Nov 22, 2010, at 10:34 PM, Steve Jobs wrote:

>

>> What do you recommend we do?

>>

>> The first step might be to say they must use our payment system for everything, including books (triggered by the newspapers and magazines). If they want to compare us to Android, let's force them to use our far superior payment system. Thoughts?

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>> Steve

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>>>

>>> Not fun to watch.

>

**Subject:** Re: How Apple Killed the iFlow Reader  
**From:** Steve Jobs <sjobs@apple.com>  
**Received(Date):** Tue, 15 Feb 2011 17:13:29 -0800  
**Cc:** Eddy Cue <cue@apple.com>, Ron Okamoto <rokamoto@apple.com>, Bruce Sewell <bsewell@apple.com>  
**To:** Philip Schiller <schiller@apple.com>

IS their app any good? Lots better than iBooks? Or is this guy just pissed?  
Bottom line - we didn't have a policy and now we do, and there will be some roadkill because of it. I don't feel guilty. They want to use our payment system, which we have invested a TON of money into creating and maintaining, for free and that's not going to be possible going forward.

Steve

On Feb 15, 2011, at 4:53 PM, Philip Schiller wrote:

Privileged and Confidential  
FYI - Starting to get some developer negative reactions....

Begin forwarded message:

**From:** Dennis Morin <[dennisrenemorin@gmail.com](mailto:dennisrenemorin@gmail.com)>  
**Date:** February 15, 2011 3:53:27 PM PST  
**To:** Philip W Schiller <[schiller@apple.com](mailto:schiller@apple.com)>  
**Subject:** **How Apple Killed the iFlow Reader**

Mr. Schiller:

Based on Apple's response to the email that I sent you in September of 2009 which is included below, six people put their heart and soul and 14 months of their lives into developing an ereader application and ebookstore for iOS. We undertook this effort based on trust and assurances from Apple in the person of your delegate Cindy Lawrence that our business model was acceptable under the rules for app development. The BeamItDown staff worked for subsistence wages and sweat equity to build what is the best ereader product on your platform according to our users. I personally invested several hundred thousand dollars in this project. Less than three months ago, Apple approved our app and we released it. Unfortunately all this is for nothing because under Apple's draconian new rules it is impossible for anyone but Apple to sell books at a profit on iOS, notwithstanding all the bogus crap about parallel purchasing systems. Your brilliant PR has succeeded in hiding this sad reality from the press to date, but you and I both know the reality. The legality of

Apple's actions will hopefully be tested in the courts, but the immorality of Apple's behavior towards us, a small developer, is unquestionable. Apple totally screwed us over for no discernible reason. You could have simply said "No, you can't do that" and we would have done something else. The innovative iFlow Reader will die and our people will be out looking for jobs. The unimpressive iBooks app will become the only ereader choice for your users. I realize that our fate is of no consequence to you or Apple, but you should all be profoundly ashamed of yourselves. Good business does not require this kind of sleazy behavior towards anyone, let alone the developers who have supported the success of the iOS platform.

Dennis R. Morin  
BeamItDown Software  
Irvine, CA

----- Forwarded message -----

From: Dennis Morin <[dennisrenemorin@gmail.com](mailto:dennisrenemorin@gmail.com)>  
Date: Sun, Sep 27, 2009 at 2:52 PM  
Subject: Some Questions and Comments from a Serious Developer  
To: "Philip W. Schiller" <[schiller@apple.com](mailto:schiller@apple.com)>

Mr. Schiller,

We are a very serious software developer that is currently developing e-reader software for the iPhone and iPod Touch. This is a full time job for us. We are not just here to double our allowance. Our team has a long history of success in software development on a wide range of platforms. We took one of our previous efforts public on NASDAQ (Wonderware) and it is now a \$250 million dollar a year business. We have also been involved in a number of other serious software and tech ventures that have achieved significant success. We plan to achieve the same level of success with Apple. I say all of this in order to establish a bit of credibility in hopes of improving our "relationship" with Apple. I put the word "relationship" in quotes because for all practical purposes, we do not actually have a relationship with Apple and we believe that it would be very helpful if we did. At the present time, we have nothing but anonymous communications with Apple and we have no way to get specific questions answered. This is in sharp contrast to our relationships with Google and Adobe where we can easily get senior technical and marketing personnel to answer our questions. We would like this kind of support from Apple so that we can avoid taking dead end approaches in our efforts to develop exceptional products for the iPhone/iPod Touch.

To date, we have achieved some success selling our first generation e-reader app on iTunes bundled with public domain content. We have generated several hundred thousand dollars in revenue and are seeing our products installed on 6000+ new devices every day. Our users love our e-reader app. We are currently developing the next generation of this product and we have a number of questions that we would like answered. Specifically:

1. What restrictions are there on processing e-commerce transactions. It is widely believed that Apple prohibits apps from directly processing e-commerce transactions for digital content and all such transactions must be routed through Safari. We can find no documentation supporting this belief. Can we process such transactions directly in our e-reader app?
2. Is it possible to get a contact at Apple who can answer such questions as they arise? I can assure you that we are not high maintenance, but sometimes it would be

very helpful to get a definitive answer to some of our questions.

3. The In App Purchase facility is currently limited to "Paid Apps" and does not allow any free content to be downloaded. Apple currently charges a 30% fee for any content purchased through this mechanism. For a bookseller, this is a completely unworkable approach for a number of reasons. First is the puzzling restriction that only "Paid Apps" can avail themselves of In App Purchasing. Ideally, we would like to offer our e-reader platform for free and then sell individual books through the In App Purchase mechanism. Experience tells us that requiring the user to pay even a nominal price for the reader would reduce the number of downloads by a factor of ten to one hundred. This is not feasible from a business perspective. Second, the 30% charge for this content is a deal breaker for book content. For all practical purposes, Apple is doing nothing more than the merchant processing of the transaction here, but is charging about 10 times the going rate for this service. This is unlike an app displayed in the iTunes App Store where Apple is providing value that is commensurate with the 30% fee. This fee is a huge incentive for developers to process such transactions through an external mechanism because they are already doing most of the work required to support such content downloads. For copyrighted content, adding 30% to the price of a book inevitably results in e-book prices that are significantly higher than that of the printed book. Most users see this as unacceptable. I think that you should reconsider the restrictions and pricing structure for In App Purchases. I would suggest that you allow any app to do In App Purchase, and then you reduce the Apple fee for this to something that is more competitive with the high end of commercial merchant processing services like PayPal. This probably means a fee of 5 to 10% max which would be far more reasonable in this situation. Is this a possibility?
4. It is not clear what the review process will be for In App Purchase or what mechanisms would exist for submitting hundreds of thousands of titles in bulk. It is clearly not feasible for a developer to do this manually through iTunes and it is clearly not feasible for Apple to review every submission if there are 100,000 plus items. Once again, this approach may work well for a game with an occasional content update, but it can't work for a developer who wants to provide extensive libraries of content. It is hard to imagine that this is Apple's intent. Are there any plans to address this issue?
5. Certain apps have enhanced presentations on the iTunes App Store display which significantly boosts their credibility when compared with the usual presentation. How does one go about getting such customization?
6. Apple's TV ads always use the Classics app to show that you can read a book on the iPhone or iPod Touch. This exposure is clearly responsible for the fact that the Classics is the number one selling Book app on iTunes, which probably results in Apple featuring them in their ads. This despite the fact that it is really not a very good book reader although it excels in the area of gratuitous graphics. I suspect that most people just use it to demonstrate just how cool their iPhone is as opposed to actually reading a book with it. ScrollMotion has also benefited greatly from Apple's attention. What can we do to get this sort of promotional assistance from Apple

We believe that we currently have the best reading platform on the iPhone/iPod Touch. We are planning to release a new version before the end of the year that will be far, far better. The biggest limitation of our current offering is content, but we will have hundreds of thousands of titles available by the end of the year as well as a number of unique new features and gratuitous graphic effects. We expect to be the number one e-reader platform on the iPhone/iPod Touch before the end of next year. We hope that we can get more support from **Apple as we pursue this goal.**

Best regards,  
Dennis R. Morin  
BeamItDown Software

Irvine, CA  
Dennis