

EXHIBIT A

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

APPLE INC.,

Defendant.

Civil Action No. 1:12-CV-2826

**[PROPOSED FORM OF] FINAL
JUDGMENT**

and

THE STATE OF TEXAS, *et al.*,

Plaintiffs,

v.

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

Defendants.

**[PROPOSED FORM OF] ORDER
ENTERING PERMANENT
INJUNCTION**

Civil Action No. 1:12-CV-3394¹

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

¹ Pursuant to the agreement of the parties and Court order, the proceedings in *The State of 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.

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 VII.A of this Final Judgment, on which this Final Judgment takes effect.

H. “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.

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

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

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

L. “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.

M. “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.

N. “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.

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

P. “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.

Q. “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.

R. “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.

S. “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 Defendant 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 Defendant relating to the sale of E-books that contains a Retail Price MFN.

C. Except in connection with the renegotiated agreements set forth in IV.B, *infra*, 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.

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 its business interests in good faith.

E. Apple shall not communicate, directly or indirectly, to any E-book Publisher Defendant (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:

- a. the E-book Publisher's business plans or strategies;
- b. the E-book Publisher's future wholesale or retail prices for E-books sold at other retailers; or
- c. any terms in the E-book Publisher's agreement(s) with any retailer of books licensed or sold in any format.

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.

IV. REQUIRED CONDUCT

A. Within 90 days of the Effective Date of this Final Judgment, Apple shall modify any Agency Agreement with a Publisher Defendant to comply with III.C, *supra*.

B. Apple shall terminate and complete renegotiation of its current agreements with the Publisher Defendants within a reasonable time frame after termination, not to exceed six months, consistent with the terms of this injunction, on the following intervals measured from the Effective Date of the Final Judgment:

1. Publisher 1 – 2 years
2. Publisher 2 – 2 years, six months
3. Publisher 3 – 3 years
4. Publisher 4 – 3 years, six months
5. Publisher 5 – 4 years

Apple will have the right to select the order of Publishers for renegotiation.

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. This provision does not prevent Apple from changing its App Store terms and conditions and applying them in a reasonable manner that does not discriminate against E-Book apps for competitive reasons, or from introducing new categories of Apps with different terms and conditions, without applying those terms and conditions to E-book Apps.

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 any Publisher has impermissibly coordinated or is impermissibly coordinating on the terms on which it supplies or offers its 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 to serve as Antitrust Compliance Officer, who shall jointly report to the Audit Committee or equivalent committee of Apple's Board of Directors and the General Counsel 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 appropriate 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 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 and the Representative Plaintiff States a description of the actual or potential violation of this Final Judgment and the corrective actions taken;

H. furnishing to the United States and the Representative Plaintiff States 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 violations of the antitrust laws in connection with Apple's negotiation of Publisher agreements for the iBookstore; and

I. providing to the United States and the Representative Plaintiff States 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. 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. to 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.

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, or the Attorney General's Office of any Plaintiff State, 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.

VII. 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 for good cause only, based on a showing of systemic and material violations, this Final Judgment shall expire by its own terms and without further action of this Court five years after its Effective Date.

SO ORDERED:

DENISE L. COTE
UNITED STATES DISTRICT JUDGE

Dated: