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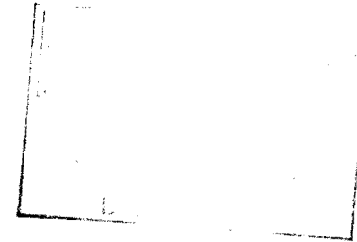
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April 30, 2012

Via Hand Delivery

The Honorable Denise L. Cote
 United States District Court Judge
 Southern District of New York
 500 Pearl St., Room 1610
 New York, NY 10007-1312

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 5/1/12



Re: *In re: Electronic Books Antitrust Litig.*, No. 11-md-02293 (DLC);
United States of America v. Apple, et al., No. 12 Civ. 2826 (DLC)

Dear Judge Cote:

We write on behalf of class plaintiffs concerning the “Settling Defendants”¹ Proposed Stay Order. We sought a modification to the Settling Defendants’ Proposed Stay Order, which they rejected, requiring the Settling Defendants to produce discovery materials already produced (document discovery) or generated (deposition transcripts) during the federal and state pre-filing investigations. There is almost no burden and production will advance efficient case management.

With respect to burden, “re-producing” extant discovery will involve merely copying electronic discovery – in essence copying a DVD or hard drive and electronic versions of deposition testimony. This will likely require, at most, a few hours of work. Moreover, our proposed protective order regarding confidential information treats these documents as Highly Confidential during the period the Settling Defendants are making any additional confidential designations to discovery materials already generated. So there is no burden that could be credibly asserted that would detract from the Settling Defendants’ settlement negotiations.

Efficient case management also supports our proposed modification. We believe in good faith that a number of states will not join the state Attorney Generals’ settlement and/or litigation. Thus, any agreement between the states and the Settling Defendants

¹ Settling Defendants refers to Defendants HarperCollins Publishers L.L.C., Hachette Book Group, Inc., and Hachette Digital, Inc.

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will, at most, likely cover only a subset of consumers in the United States. For the remainder of the consumers in the United States, the class claims will certainly proceed against the Settling Defendants. And regardless of the settlement posture, the evidence the Settling Defendants possess will be discoverable, as they are co-conspirators in the scheme.

Also, if the Court adopts the Settling Defendants' Proposed Stay Order, it will unnecessarily balkanize and slow the claims in the case. Case management will be optimized by keeping issues, such as discovery, on similar tracks when feasible. Having the Settling Defendants produce discovery already generated will allow the class plaintiffs to immediately start reviewing the materials to ensure the timing of future discovery events can be coordinated without slowing the process.

Finally, the Settling Defendants stated they will soon present their settlement with the state Attorneys Generals, and they claim to want out of this case quickly. When and if this occurs, the Court will apply a similar standard for approval of a class settlement. *See, e.g., In re Toys "R" Us Antitrust Litig.*, 191 F.R.D. 347, 352 (E.D.N.Y. 2000). That is, the Court will be asked to "bless" the settlements as fair, reasonable and adequate. We believe class counsel could be in a unique position to assist the Court at that stage. This is particularly important here where the settlements occurred before a single claim or defense has been tested, and the Court has not had the opportunity to view the evidence and potential damages. But to help in this role, it is important we have the very discovery the states had when deciding to settle.

Accordingly, we respectfully submit an alternative [Proposed] Stay Order for the Court's consideration.

Respectfully,

HAGENS BERMAN SOBOL SHAPIRO LLP



Steve W. Berman
Attorney

Enclosure

Cc: All counsel of record (by e-mail with enclosure)

Digital, Inc. (together, "Settling Defendants"¹). Notwithstanding, within ten days of entry of a protective order governing treatment of confidential information by this Court, the Settling Defendants shall produce to the counsel for the putative class plaintiffs all documents, data and written discovery responses that the Settling Defendants previously provided to the Department of Justice or any state Attorney General's office relating to this action. Within the same time period, the Settling Defendants shall also provide to the counsel for the putative class plaintiffs all deposition transcripts of testimony relating to this action.

In addition, the Settling Defendants may participate in any deposition (of any other party or non-party) occurring during that period should they so choose. Except for good cause shown, Settling Defendants shall not seek duplicative discovery of any other party after the period of the stay. Neither Settling Defendants (individually or collectively) nor any other party to this action is prohibited from seeking an extension of such stay should circumstances require.

DATED: _____

HONORABLE DENISE L. COTE
UNITED STATES DISTRICT JUDGE

¹ The term "Settling Defendants" does not include Defendants Simon & Schuster, Inc. and Simon & Schuster Digital Sales, Inc., as those entities have yet to reach agreement in principal with any state Attorneys General, and the litigating states are opposing any such stay as to these Defendants at this time.