SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

FOUR TIMES SQUARE
NEW YORK 10036-6522

TEL: (212) 735-3000
FAX: (212) 735-2000
www.skadden.com

DIRECT DIAL
(212) 735-3610
DIRECT FAX
(917) 777-3610
EMAIL ADDRESS
SHEPARD.GOLDFEIN@SKADDEN.COM

FIRM/AFFILIATE OFFICES
BOSTON
CHICAGO
HOUSTON
LOS ANGELES
PALO ALTO
SAN FRANCISCO
WASHINGTON, D.C.
WILMINGTON
BEIJING
BRUSSELS
FRANKFURT
HONG KONG
LONDON
MOSCOW
MUNICH
PARIS
SÃO PAULO
SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

6/25/2012

June 21, 2012

BY HAND DELIVERY

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

DLC
6/25/12

Re: In re MDL Electronic Books Antitrust Litigation, Civil Action No. 11-md-02293 (DLC)

Dear Judge Cote:

On behalf of HarperCollins Publishers, L.L.C., Hachette Book Group, Inc., and Simon & Schuster, Inc. (collectively, the "Settling Defendants"), I am writing for the limited purpose of responding to mischaracterizations of the Settling Defendants' position set forth in the barrage of letters that have been submitted relating to the Joint Report.

As to their "status" in the various cases, the Settling Defendants are not seeking "special treatment" or to slow down the progress of the cases. Despite the stay entered by the Court, the Settling Defendants have participated in all the meetings and calls relating to the Protective Order, the Initial Report and the ESI Order and provided comments and edits to the extent they had any. The Settling Defendants recognize that they are parties to the class action, and that if the State AG settlement does not encompass all U.S. states and territories they will be subject to party discovery in that action once the stay expires. But they are not a party to the State AG action and have settled with both the State AGs and the DOJ. Even in those cases, the Settling Defendants have stated their willingness for the duration of the cases to accept service of discovery requests without the State AGs or DOJ having to serve subpoenas upon the parties.

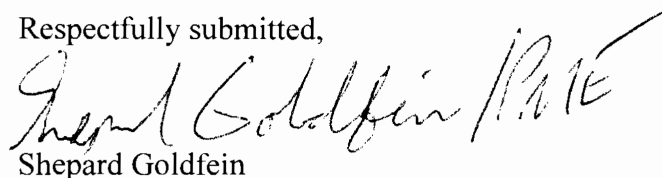
As to discovery, the Settling Defendants are not objecting to any further discovery. The Settling Defendants have merely pointed out that they have already provided a mass of discovery during the multi-year investigations by the DOJ and State AGs into the same alleged conspiracy at issue in this case. Specifically, the Settling Defendants collectively have produced over three hundred thousand documents totaling more than 2.4 million pages, had 6 witnesses deposed for 11 total days, and responded to 150 interrogatories. All parties to these litigations now have all of this material, or are scheduled to have the material by the end of this week. The parameters of the completed discovery was the product of extensive discussions with the DOJ and State AGs and was designed to discover all relevant, non-privileged documents in the Settling Defendants' possession. Of course, if plaintiffs believe

there are any gaps in the discovery that already has been conducted, once the stay expires they are free to serve discovery requests targeted at filling those gaps. The Settling Defendants do object, however, to any broad based discovery demands that ignore the discovery that already has been conducted.

As to specific types of discovery, Class Plaintiffs have not articulated any justification for the substantial and unilateral deviation from what is permitted under the Federal Rules of Civil Procedure that they propose. While most of the parties have agreed to limits of 25 interrogatories and 25 requests for admission, Class Plaintiffs are proposing that they alone should have a total of 100 interrogatories and 100 requests for admission – with 25 interrogatories and 25 requests for admission to be used generally in the case and an additional 25 interrogatories and 25 requests for admission to be used against each of the three Settling Defendants. Similarly, with respect to depositions, it is the Plaintiffs and Non-Settling Defendants that are proposing a material deviation from what is permitted under the Federal Rules of Civil Procedure – that all parties to the case (except the Settling Defendants) be permitted up to 20 party fact depositions, which would allow for up to 120 party depositions in the case – with the vast majority of those obviously directed at the defendants. The Settling Defendants have proposed that, to the extent such a material deviation from the number of permitted depositions is allowed, that there should be a limit as to how many of those depositions may be used against the Settling Defendants. Given the number of depositions already taken, the Settling Defendants have proposed a limit of four additional deposition days for each Settling Defendant's witnesses for a total of twelve additional deposition days of the Settling Defendants. No party has even attempted to demonstrate why they would need more depositions from the Settling Defendants.

Finally, as to the stay that is currently in place, the Settling Defendants agree with Class Counsel that the scope of the *parens patriae* settlement with the State AGs will significantly impact the multi-district litigation. As Class Counsel acknowledges, if all states (and territories) sign on to the settlement, no private class action, or any action, will remain against the Settling Defendants. We therefore submit that it is both efficient and fair for the stay that is currently in place to be extended one month until August 10th, at which point there will be more clarity as to both the DOJ and State AG settlements and hence whether (or to what extent) the Settling Defendants will remain parties to any of the actions. No party has identified any prejudice they would suffer from extending the stay until August 10th. As noted above, the Settling Defendants have already provided substantial discovery and any appropriate follow-up discovery can occur beginning in September without interfering with any of the schedules proposed by the parties.

Respectfully submitted,



Shepard Goldfein

cc: Counsel for all parties (via e-mail)