PLAINTIFF STATES' PROPOSED CONSUMER DISTRIBUTION PLAN
***In re Texas et al. v. Hachette et al.,* Case No. 12-cv-6625 (DLC) (SDNY)**

(Revised as of October 1, 2012)

Premises

The Distribution Plan is premised on the following factors:

1) The consumers of E-books published by the non-settling publishers have claims against settling publishers under a theory of joint and several liability for an antitrust conspiracy as alleged in the Complaint. Accordingly, to obtain a full settlement for the settling defendants, the purchasers of E-books published by any of the five alleged co-conspirator agency-model publishers must receive a distribution in consideration for the release of their claims against the three settling publishers. These five publishers include the three settling publishers as well as Macmillan and Penguin. It is contemplated that any monies received from the non-settling publishers and/or Apple, whether by settlement or judgment against them, will similarly be distributed to consumers of all five agency model publishers. This distribution may then be envisioned as a partial recovery to consumers, to be followed, it is hoped, by additional recovery at a later date.

2) The technology associated with the purchase of E-books allows an unprecedented level of effective, direct notification to consumers, as well as providing multiple avenues for consumers to realize the value of their specific distribution. For example, under the distribution plan, consumers may choose to receive the value of their distribution either by applying it to additional purchases of E-books or by requesting a check for the same amount.

3) It should be made as easy as possible for consumers to obtain their distribution. Thus, the Distribution Plan contemplates that consumers who can be directly identified and whose distribution amount can be calculated and applied by retailers will receive a credit to their account unless they specifically choose to opt out or to request a check. Certain other consumers who can be identified sufficiently from retailer provided data will receive checks. Virtually no consumer will be denied a distribution due to inattention on the part of the consumer.

4) Distributions to any individual should be in proportion to the number of qualifying E-books that she purchased during the claim period and distribution on a per E-book basis should be in rough proportion to the calculated amount of price increases experienced by each class of E-books as well as the risk-adjusted probability of success on the merits of

an antitrust case related to that type of E-book. Thus the distribution amount for a qualifying New York Times bestseller is higher than for a non-bestseller.

5) Business, technological and legal issues constrain the ability of some retailers to provide certain notice and distribution services. Therefore, the Distribution Plan makes accommodations for consumers who purchased from different retailers. For example, Crediting Retailers (as defined below) can identify eligible customers and, upon final court approval, apply credits to customer accounts. By contrast, Google can only send notices to potentially eligible consumers, and Google consumers will then need to make claims using the website established by the Claims Administrator. The details for the all the retailers are more specifically explained in the Plan, below.

6) The Distribution Plan must screen out duplicate claims.

7) The Distribution Plan must exclude consumers in states whose Attorneys General do not participate in the settlement.

8) Distribution amounts are based on a known settlement amount of $69.04 million and a calculated number of qualifying E-books. The States received aggregate information from Amazon, Barnes & Noble and Apple, which shows the actual number of E-books sold by the Agency 5 publishers through these retailers during the period from April 1, 2010 (or the later start of an agency arrangement with respect to certain publishers) and May 21, 2012. Based on information received from the Settling Publishers, the Distribution Plan assumes that these three retailers have a combined market share of 97% of the E-books sold during the qualifying period. This sales information was broken down by NYT Bestsellers, frontlist and backlist.

9) A 5% holdback is assumed initially to account for potential claims greater than assumed. Thus, the initial per unit distributions are calculated based on a settlement amount of $65.6 million. Following completion of the claims period, the per-unit recoveries will be recalculated as necessary to distribute the full $69.04 million available.

The Plan

1. Qualifying E-books include all new E-books sold under an agency model contract by Hachette, HarperCollins, Simon & Schuster, Macmillan and Penguin during the period from April 1, 2010 through May 21, 2012, inclusive (the “Claim Period”).

2. Qualifying consumers shall include all individual consumer purchasers (exclusive of business, government, library, non-profit or other entity consumers) resident in any State

or Territory, with the exception of those consumers resident in the State of Minnesota, who shall have no rights to any distribution hereunder. For purposes of this limitation, the billing address associated with the credit card used for the purchase shall be determinative as to residence.

3. Although payment calculations cannot be finalized until the notice period is closed and the number of claims are known, it is expected that for each E-book that was on the New York Times bestseller list during the relevant period (Fiction, Non-Fiction and Advice), the distribution will be $1.32 per unit. For each E-book that was not on the New York Times Bestseller list during the relevant period (whether considered a frontlist or a backlist title), the distribution will be $0.30 per unit. Although these amounts may be adjusted following the end of the claims period, recoveries will not exceed the calculated treble damages amount for any individual unit. No recoveries shall be distributed on account of free E-books.

4. With respect to customers of Amazon, Barnes & Noble, Apple, and Kobo,[1] (each, a "Crediting Retailer"), the following procedures shall apply:

    a. The Crediting Retailer will identify in its own internal system all individual customers who purchased qualifying E-books and shall calculate the distribution for each such customer based on the per unit recoveries specified in Paragraph 3 (as subsequently adjusted).

    b. As more fully set forth in the Notice Plan, the Crediting Retailer will provide direct email notice to the identified customers within its system.[2] The email will direct customers to a website maintained by the Claims Administrator. The email will contain a unique customer identifying number or will direct the customer to his or her Crediting Retailer account to obtain such number.

    c. For purposes of maintaining customer privacy, customers will be identified by unique numbers to be provided by the Crediting Retailer rather than by name.

    d. In addition to providing the notice information set forth in the Notice Plan, the website will provide an option for customers to request a check and will provide instructions on how to opt out of the settlement entirely. Customers claiming a check shall provide both name and address for the check, as well as the unique customer identifier used to confirm their status with the Crediting Retailer. Any

[1] Kobo's customers include those former Borders customers who opted to transition their accounts to Kobo before Borders went out of business.
[2] Apple will provide sufficient notice to all the Claims Administrator to send direct email notice to Apple customers.

claim made for purchases from a Crediting Retailer that does not have a unique customer identifier will be treated the same as a claim for a purchase from an Other Retailer.

e. The Claims Administrator will provide to each Crediting Retailer a list of consumers who have elected either to opt-out or to receive a check.

f. Upon final approval by the Court, for any identified Amazon customers who are not on the list of those electing to opt-out or receive a check, Amazon will provide a second direct email notice, notifying them that the calculated amount of their distribution is available as an account credit. This credit can be used for further E-book or print book purchases from Amazon.

g. Upon final Court approval, for any identified customers of any other Crediting Retailer (not Amazon) who are not on the list of those electing to opt-out or receive a check, the Crediting Retailer will provide a second direct email notice, notifying them that the calculated amount of their distribution is available as an account credit and instructing them how to activate the credit. This credit can be used for further E-book or print book purchases from the Crediting Retailer.

h. Following final Court approval, the Claims Administrator will send checks to those consumers who have requested them in lieu of a credit.

5. With respect to customers of Sony, the following procedures shall apply:

a. Sony shall provide sufficient information to allow the Claims Administrator to send direct email notice to eligible Sony customers, as set forth more fully in the Notice Plan. The email will direct customers to the website maintained by the Claims Administrator. The email will contain a unique customer identifying number to be provided to the Claims Administrator website.

b. Once directed to the Settlement website, the Sony customer will be informed how to opt-out of the settlement and will be provided with a form to be used to make a claim for a check. To make a claim, the customer will be required to provide the unique customer identifying number previously emailed to the customer by the Claims Administrator but will not be required to provide all purchase information. The claim form will clearly state that making a claim will also constitute permission for the Claims Administrator to contact Sony to verify the information provided by the customer.

c. Sony will also provide to the Claims Administrator sufficient information to determine, for each eligible Sony customer, the E-books purchased by title, ISBN, and purchase date, and the customer's name and address. Using this information, the Claims Administrator will calculate the distribution for each such customer using the per unit distribution amounts set forth in Paragraph 3.

d. Upon final Court approval, the Claims Administrator will send checks to Sony customers with valid claims and/or for whom the Claims Administrator has a name and address.

6. With respect to customers of Google, the following procedure shall apply:

a. Google shall provide direct email notice to its own potentially eligible customers, as set forth more fully in the Notice Plan. The email will direct customers to the website maintained by the Claims Administrator. The email will contain a unique customer identifying number to be provided to the Claims Administrator website.

b. Once directed to the Settlement website, the Google customer will be informed how to opt-out of the settlement and will be provided with a form to be used to make a claim for a check. To make a claim, the customer will be required to provide the unique customer identifying number previously emailed to the customer by Google but will not be required to provide all purchase information. The claim form will clearly state that making a claim will also constitute permission for the Claims Administrator to contact Google to verify the information provided by the customer.

c. Using information provided by the claiming customer, the Claims Administrator will coordinate with Google to calculate the distribution for each such customer using the per unit distribution amounts set forth in Paragraph 3.

d. Upon final Court approval, the Claims Administrator will send checks to customers with valid claims.

7. With respect to customers of any retailer not otherwise named herein (an "Other Retailer"), the following procedures shall apply:

a. The customers shall receive publication notice in accordance with the Notice Plan. The publication notice will direct customers to the website maintained by the Claims Administrator.

b. Once directed to the Settlement website, the customer will be informed how to opt-out of the settlement and will be provided with a form to be used to make a claim for a check. The customer will be required to identify the retailer from which she purchased E-books and the specific E-books for which distribution is claimed. The claim form will clearly state that making a claim will also constitute permission for the Claims Administrator to contact the appropriate retailer to verify the information provided by the customer.

c. Using information provided by the claiming customer, the Claims Administrator will, as necessary, verify the qualifying purchases with the appropriate retailer and will calculate the distribution for each such customer using the per unit distribution amounts set forth in Paragraph 3.

d. Upon final Court approval, the Claims Administrator will send checks to customers with valid claims.

8. Purchases by a single customer from two different retailers shall not be combined in the same claim. Rather, each retailer shall be the subject of a separate claim by the customer and shall be handled in the manner appropriate to that retailer. Thus, the customer could receive credits at each retailer, multiple checks or a combination of checks and credits, as elected by the customer.

9. Consumers may opt out of one, two or all three individual publisher settlements. If the consumer opts out of the Hachette settlement, the distribution to that customer will be reduced by 46%. If the consumer opts out of the HarperCollins settlement, the distribution to that consumer will be reduced by 28%. If the consumer opts out of the Simon & Schuster settlement, the distribution to that consumer will be reduced by 26%.

10. Credits for Amazon customers will expire if not used by the first anniversary the credit was available in the account. Credits for customers of other Crediting Retailers (not Amazon) will expire if not activated by the first anniversary the notice was sent to activate the credit. Unused checks shall expire not later than the first anniversary of the initial date of distribution. Undeliverable checks returned by the United States Post Office will be traced and re-mailed. Checks returned undeliverable a second time will be voided. Reissued checks will expire at the earlier of: a) 90 days from the reissue date; or b) the first anniversary of the initial date of distribution. Any remaining funds shall be distributed in accordance with the Settlement Agreement. At the discretion of the States, any remainder may also be held for future distribution in conjunction with other settlements or judgments.