

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”), effective on the date when signed by the last Party (the “Effective Date”), is made by and between Chronicle Books, LLC (“Chronicle”), Hachette Book Group, Inc. (“Hachette”), HarperCollins Publishers LLC (“HarperCollins”), Macmillan Publishing Group, LLC (“Macmillan”), Penguin Random House LLC (“PRH”), Scholastic Inc. (“Scholastic”), and Simon & Schuster, Inc. (“S&S”) (collectively, “Publishers”) and the Association of American Publishers (the “AAP”), on the one hand, and Audible, Inc. (“Audible”), on the other hand (collectively, the “Parties” and each a “Party”);

WHEREAS, Publishers are the owners or exclusive licensees of copyrights, including United States digital text rights, in and to certain literary and audiobook works (“Publishers’ Works”), including but not limited to the works identified in Paragraph 36 of the Complaint (Dkt. No. 1);

WHEREAS, the AAP is the national trade association for the American publishing industry and has and will have association members, including without limitation the Publishers, (the “AAP Members”);

WHEREAS, the AAP Members are responsible for developing, publishing, distributing, and/or marketing literary works, including the Publishers’ Works, in all formats (the “AAP Members’ Works”);

WHEREAS, Audible created a service named “Audible Captions,” that is capable of generating written text from the audiobook versions of the AAP Members’ Works and displaying that written text to Audible users (an “Audiobook-to-Text Service”);

WHEREAS, on August 23, 2019, Publishers filed a Complaint and an Order to Show Cause for Preliminary Injunction (Dkt. No. 3) in the United States District Court for the Southern

District of New York, Case No. 19 Civ. 7913 (the “Litigation”) against Audible based on claims of copyright infringement;

WHEREAS, on September 12, 2019, Audible moved to dismiss the Litigation and opposed Publishers’ Order to Show Cause for Preliminary Injunction (Dkt. Nos. 34-42), denying Publishers’ allegations, including infringement, on the grounds of fair use, among others;

WHEREAS, the Parties wish to resolve the Litigation and all issues between them raised or that could have been raised in the Complaint by the terms set forth in this Agreement;

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. The foregoing Recitals are expressly incorporated as part of the Settlement Agreement, and the Parties confirm and represent to one another that said Recitals are true and correct to the best of their knowledge, information, and belief.
2. Audible will obtain the permission of the owner or exclusive licensee of the copyrights that govern United States digital text rights in or to the AAP Members’ Works before offering any Audiobook-to-Text Service for the AAP Members’ Works.
3. In consideration of the Parties’ performance hereunder, Audible agrees to pay each of the Publishers the amount of [REDACTED] (the “Settlement Payment”), equaling a total amount of [REDACTED] [REDACTED] to be paid to the AAP by wire transfer initiated within thirty (30) business days after the Effective Date.
4. Within five (5) business days of Publishers’ receipt of the Settlement Payment, the Parties’ counsel shall execute and file the proposed stipulated consent permanent injunction and dismissal with prejudice in the form attached hereto as **Exhibit A** (the “Permanent

Injunction”).

5. In consideration for the promises and commitments exchanged herein, and upon but not until Publishers’ receipt of the Settlement Payment, which Publishers and AAP acknowledge to be good and valuable consideration, Publishers and AAP knowingly and voluntarily release and forever discharge Audible, any of its parent, subsidiary, division, and related companies, and any of its past and present directors, managers, officers, shareholders, partners, agents, employees, attorneys, and servants, and each of its predecessors, successors, and assigns, in each case solely in his, her or its capacity as such (the “Audible Releasees”) from any and all causes of action and claims for relief relating to Audible’s Audiobook-to-Text Service that were reasonably known to Publishers or the AAP and could have been asserted by Publishers in the Litigation as of the Effective Date of this Agreement.

6. In consideration for the promises and commitments exchanged herein, which Audible acknowledges to be good and valuable consideration, Audible knowingly and voluntarily releases and forever discharges Publishers and AAP, and any of their parents, subsidiaries, divisions, and related companies, and any of their past and present directors, managers, officers, shareholders, partners, agents, employees, attorneys, and servants and each of their predecessors, successors, and assigns, in each case solely in his, her or its capacity as such (the “Publisher Releasees”) from any and all causes of action and claims for relief relating to Audible’s Audiobook-to-Text Service that were reasonably known to and could have been asserted by Audible in the Litigation as of the Effective Date of this Agreement.

7. In consideration of Paragraph 2, the AAP represents and warrants that the AAP will not provide financial or organizational support to any of the AAP Members in bringing legal action against Audible based on any causes of action and claims for relief concerning Audible’s

Audiobook-to-Text Service that were reasonably known to and could have been asserted by such persons in a legal action prior to or contemporaneous with the Litigation.

8. Neither the execution of this Agreement by the Parties, nor any consideration given or accepted in connection with it, nor any promise or covenant made in it, are to be construed or deemed as determinative of the value of any claim by Publishers against Audible. Each Party has entered into this Agreement in settlement and compromise of the respective actual or potential claims of the other Party.

9. This Agreement shall be governed by and construed under the laws of the State of New York. The Parties agree that the Honorable Valerie E. Caproni of the United States District Court for the Southern District of New York shall retain jurisdiction to adjudicate any controversy or claim arising out of or relating to this Agreement or the Permanent Injunction. The Parties hereby waive and agree not to assert any objection they may have to the exclusive jurisdiction of, and service of process by, that Court for the purpose of resolving any disputes and the propriety of venue in that district, including without limitation based on the doctrine of *forum non conveniens*.

10. Whenever possible, each provision of this Agreement shall be interpreted to be effective and valid, but if any provision of the Agreement is invalidated, this invalidity shall not affect the validity of the remainder of the Agreement.

11. The Parties agree to keep Paragraph 3 of this Agreement confidential to the Parties, except that the Parties may disclose Paragraph 3 to their affiliates, lawyers, accountants, and other financial advisors for the purposes of obtaining professional advice, as well as required by law, lawful process, or court order. The Parties agree to make only the following public statement relating to the resolution of the Litigation, whether jointly and/or individually: "AAP,

the Plaintiffs, and Audible have resolved their pending litigation. Audible has agreed that it will obtain permission from any AAP Members that are in good standing with AAP before moving forward with Audible Captions for their works.” For the avoidance of doubt, and expressly excluding Paragraph 3, nothing in this paragraph shall a) prohibit the AAP from advising its members as to the terms of this Agreement, or b) prohibit any of the Parties from privately or publicly discussing information that is publicly known or available at the time of this Agreement, as well as information contained in publicly available court documents.

12. Whenever any notice is to be given under or pertaining to this Agreement, the notice shall be in writing and addressed to the persons designated below, and the notices shall be effective upon delivery. Notices by overnight courier services shall be deemed delivered on the first business day following delivery. Notices mailed by U.S. mail, postage prepaid, registered, or certified with return receipt requested, shall be deemed delivered four calendar days after mailing. Notices delivered by personal delivery shall be deemed delivered upon receipt. Delivery of notices by email shall be deemed delivered the next business day after transmission if the email is sent with a read receipt requested and the read receipt requested is preserved.

Publishers designate the following addresses for the purpose of all notifications under this Agreement:

Allan Robert Adler
Executive Vice President & General Counsel
Association of American Publishers
455 Massachusetts Ave., NW, 7th Floor
aadler@publishers.org

With a copy to:

membership@publishers.org

And an additional copy to:

Dale M. Cendali
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
dale.cendali@kirkland.com

Audible designates the following addresses for the purpose of all notifications under this Agreement:

Legal Department,
Audible, Inc.
1 Washington Park, Newark, NJ 07102
legalnotices-us@audible.com
Fax: (973) 820-0505

Amazon.com, Inc.
Attn: General Counsel
P.O. Box 81226
Seattle, WA 98108-1226
contracts-legal@amazon.com

With a copy to:

Emily Reisbaum
Clarick Gueron Reisbaum LLP
220 Fifth Avenue
New York, NY 10001
ereisbaum@cgr-law.com

13. If Audible fails to perform its obligations under this Agreement, AAP Members shall, in accordance with Paragraph 12, provide Notice of such failure to Audible. If Audible can demonstrate that it understood in good faith the work to be in the public domain, or obtained

permission from an individual or entity that warranted that it was the owner or exclusive licensee of the digital text rights to one of the AAP Members' Works, but the individual or entity was not in fact the owner or exclusive licensee of the relevant rights, Audible's inadvertent failure to perform in accordance with this Agreement may be cured within ten (10) days of receipt of such Notice, without penalty.

14. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against, the Parties; Paragraphs 5 and 6 of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the released parties as described in those Paragraphs.

15. This Agreement is to be deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity shall not be construed for or against any Party based on attribution of drafting to any Party.

16. The Parties each represent and warrant that they have all requisite power and authority to enter into this Agreement and to perform all of their respective obligations hereunder.

17. This Agreement may be executed in counterparts, which together after execution by all Parties shall constitute one document. The signature of the Parties need not appear on the same counterpart, and delivery of an executed counterpart in PDF form is as effective as executing and delivering this Agreement with an original signature or in the presence of the other Party.

18. This Agreement contains the full understanding and complete agreement of the Parties, and any and all prior agreements relating to the subject of this Agreement are superseded in their entirety. This Agreement cannot be modified other than in a writing signed by the

Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CHRONICLE BOOKS, LLC

By: 

Name: Tyrell Mahoney

Title: President

Date: Chronicle Books

PENGUIN RANDOM HOUSE LLC

By: _____

Name: _____

Title: _____

Date: _____

HACHETTE BOOK GROUP, INC.

By: _____

Name: _____

Title: _____

Date: _____

SCHOLASTIC INC.

By: _____

Name: _____

Title: _____

Date: _____

HARPER COLLINS PUBLISHERS LLC

By: _____

Name: _____

Title: _____

Date: _____

SIMON & SCHUSTER, INC.

By: _____

Name: _____

Title: _____

Date: _____

MACMILLAN PUBLISHING GROUP,
LLC

By: _____

Name: _____

Title: _____

Date: _____

ASSOCIATION OF AMERICAN
PUBLISHERS

By: _____

Name: _____

Title: _____

Date: _____

Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CHRONICLE BOOKS, LLC

By: _____

Name: _____

Title: _____

Date: _____

HACHETTE BOOK GROUP, INC.

By: MPietsch

Name: Michael Pietsch

Title: Chief Executive Officer

Date: 1/15/20

HARPER COLLINS PUBLISHERS LLC

By: _____

Name: _____

Title: _____

Date: _____

MACMILLAN PUBLISHING GROUP,
LLC

By: _____

Name: _____

Title: _____

Date: _____

PENGUIN RANDOM HOUSE LLC

By: _____

Name: _____

Title: _____

Date: _____

SCHOLASTIC INC.

By: _____

Name: _____

Title: _____

Date: _____

SIMON & SCHUSTER, INC.

By: _____

Name: _____

Title: _____

Date: _____

ASSOCIATION OF AMERICAN
PUBLISHERS

By: _____

Name: _____

Title: _____

Date: _____

Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CHRONICLE BOOKS, LLC

By: _____

Name: _____

Title: _____

Date: _____

HACHETTE BOOK GROUP, INC.

By: _____

Name: _____

Title: _____

Date: _____

HARPER COLLINS PUBLISHERS LLC

By:  _____

Name: Brian Murray

Title: CEO

Date: 1/15/20

MACMILLAN PUBLISHING GROUP,
LLC

By: _____

Name: _____

Title: _____

Date: _____

PENGUIN RANDOM HOUSE LLC

By: _____

Name: _____

Title: _____

Date: _____

SCHOLASTIC INC.

By: _____

Name: _____

Title: _____

Date: _____

SIMON & SCHUSTER, INC.

By: _____

Name: _____

Title: _____

Date: _____

ASSOCIATION OF AMERICAN
PUBLISHERS

By: _____

Name: _____

Title: _____

Date: _____

Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CHRONICLE BOOKS, LLC

By: _____

Name: _____

Title: _____

Date: _____

HACHETTE BOOK GROUP, INC.

By: _____

Name: _____

Title: _____

Date: _____

HARPER COLLINS PUBLISHERS LLC

By: _____

Name: _____

Title: _____

Date: _____

MACMILLAN PUBLISHING GROUP,
LLC

By: 

Name: PAUL STEVEN

Title: GENERAL COUNSEL + SECRETARY

Date: JANUARY 15, 2020

PENGUIN RANDOM HOUSE LLC

By: _____

Name: _____

Title: _____

Date: _____

SCHOLASTIC INC.

By: _____

Name: _____

Title: _____

Date: _____

SIMON & SCHUSTER, INC.

By: _____

Name: _____

Title: _____

Date: _____

ASSOCIATION OF AMERICAN
PUBLISHERS

By: _____

Name: _____

Title: _____

Date: _____

Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CHRONICLE BOOKS, LLC

By: _____

Name: _____

Title: _____

Date: _____

HACHETTE BOOK GROUP, INC.

By: _____

Name: _____

Title: _____

Date: _____

HARPER COLLINS PUBLISHERS LLC

By: _____

Name: _____

Title: _____

Date: _____

MACMILLAN PUBLISHING GROUP,
LLC

By: _____

Name: _____

Title: _____

Date: _____

PENGUIN RANDOM HOUSE LLC

By: Mark Doble

Name: MARK DOBLE

Title: CEO

Date: 1/15/20

SCHOLASTIC INC.

By: _____

Name: _____

Title: _____

Date: _____

SIMON & SCHUSTER, INC.

By: _____

Name: _____

Title: _____

Date: _____

ASSOCIATION OF AMERICAN
PUBLISHERS

By: _____

Name: _____

Title: _____

Date: _____

Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CHRONICLE BOOKS, LLC

By: _____

Name: _____

Title: _____

Date: _____

HACHETTE BOOK GROUP, INC.

By: _____

Name: _____

Title: _____

Date: _____

HARPER COLLINS PUBLISHERS LLC

By: _____

Name: _____

Title: _____

Date: _____

MACMILLAN PUBLISHING GROUP,
LLC

By: _____

Name: _____

Title: _____

Date: _____

PENGUIN RANDOM HOUSE LLC

By: _____

Name: _____

Title: _____

Date: _____

SCHOLASTIC INC.

By: Richard Robinson

Name: RICHARD ROBINSON

Title: CEO

Date: 1/15/20

SIMON & SCHUSTER, INC.

By: _____

Name: _____

Title: _____

Date: _____

ASSOCIATION OF AMERICAN
PUBLISHERS

By: _____

Name: _____

Title: _____

Date: _____

Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CHRONICLE BOOKS, LLC

By: _____

Name: _____

Title: _____

Date: _____

HACHETTE BOOK GROUP, INC.

By: _____

Name: _____

Title: _____

Date: _____

HARPER COLLINS PUBLISHERS LLC

By: _____

Name: _____

Title: _____

Date: _____

MACMILLAN PUBLISHING GROUP,
LLC

By: _____

Name: _____

Title: _____

Date: _____

PENGUIN RANDOM HOUSE LLC

By: _____

Name: _____

Title: _____

Date: _____

SCHOLASTIC INC.

By: _____

Name: _____

Title: _____

Date: _____

SIMON & SCHUSTER, INC.

By: Carolyn K Reidy

Name: CAROLYN K REIDY

Title: President + CEO

Date: 1/16/20

ASSOCIATION OF AMERICAN
PUBLISHERS

By: _____

Name: _____

Title: _____

Date: _____

Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates shown below.

CHRONICLE BOOKS, LLC

By: _____

Name: _____

Title: _____

Date: _____

HACHETTE BOOK GROUP, INC.

By: _____

Name: _____

Title: _____

Date: _____

HARPER COLLINS PUBLISHERS LLC

By: _____

Name: _____

Title: _____

Date: _____

MACMILLAN PUBLISHING GROUP,
LLC

By: _____

Name: _____

Title: _____

Date: _____

PENGUIN RANDOM HOUSE LLC

By: _____

Name: _____

Title: _____

Date: _____

SCHOLASTIC INC.

By: _____

Name: _____

Title: _____

Date: _____

SIMON & SCHUSTER, INC.

By: _____

Name: _____

Title: _____

Date: _____

ASSOCIATION OF AMERICAN
PUBLISHERS

By: Maria A. Pallante

Name: Maria A. Pallante

Title: President and CEO

Date: 1/16/20

AUDIBLE, INC.

By: 

Name: Cynthia Chen

Title: CFO

Date: 1/16/2020

EXHIBIT A

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

CHRONICLE BOOKS, LLC; HACHETTE
BOOK GROUP, INC.; HARPERCOLLINS
PUBLISHERS LLC; MACMILLAN
PUBLISHING GROUP, LLC; PENGUIN
RANDOM HOUSE LLC; SCHOLASTIC
INC.; AND SIMON & SCHUSTER, INC.,

Plaintiffs,

v.

AUDIBLE, INC,

Defendant.

No. 19 Civ. 7913 (VEC)

**[PROPOSED] STIPULATED CONSENT PERMANENT INJUNCTION AND
DISMISSAL WITH PREJUDICE**

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiffs Chronicle Books, LLC; Hachette Book Group, Inc.; HarperCollins Publishers LLC; Macmillan Publishing Group, LLC; Penguin Random House LLC; Scholastic Inc.; and Simon & Schuster, Inc. (collectively, “Publishers”), on the one hand, and Defendant Audible, Inc. (“Audible”), on the other hand, that this Consent Permanent Injunction (the “Permanent Injunction”) be entered in the present action as set forth below without further notice or process:

WHEREAS, Publishers are book and audiobook publishers responsible for developing, publishing, distributing, and marketing literary works;

WHEREAS, Publishers are the owners or exclusive licensees of copyrights, including United States digital text rights, in and to certain of those literary and audiobook works (“Publishers’ Works”), including but not limited to the works identified in Paragraph 36 of the Complaint (Dkt. No. 1);

WHEREAS, Audible distributes audiobook versions of certain of Publishers’ Works;

WHEREAS, Audible created a service, called “Audible Captions,” that is capable of generating written text from the audiobook versions of Publishers’ Works and displaying that written text to Audible users;

WHEREFORE, upon the consent and request of Publishers and Audible, **IT IS HEREBY ORDERED, ADJUDGED, and DECREED THAT:**

1. Audible, and its officers, agents, servants, employees, and attorneys, and other persons and entities who are in active concert or participation with Audible, are permanently restrained, enjoined, and prohibited from creating, generating, reproducing, modifying, distributing, publishing, or displaying, without express authorization from the owners or exclusive licensees of the United States digital text rights, written text derived from the

audiobook versions of Publishers' Works for any product or service created or offered by Audible. This prohibition does not apply to any text in the public domain.

2. Audible, and its officers, agents, servants, employees, and attorneys, in each case solely in his, her, or its capacity as such and acting on behalf of Audible, are further permanently restrained, enjoined, and prohibited from (a) inducing or (b) knowingly and materially contributing to, any actor other than Audible in the creation, generation, reproduction, modification, distribution, publication, or display of written text derived from the audiobook versions of Publishers' Works, unless such actions are expressly authorized by the owners or exclusive licensees of the United States digital text rights. This prohibition does not apply to any text in the public domain.

3. No bond or posting of security is required in connection with the entry of this Permanent Injunction.

4. This matter is dismissed with prejudice, and the Court shall retain jurisdiction over any application to implement and/or enforce the terms of this Stipulation and Order and related settlement agreement.

KIRKLAND & ELLIS LLP

CLARICK GUERON REISBAUM LLP

Dale M. Cendali
Joshua L. Simmons
Jordan Romanoff
Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Fax: (212) 446-4900
Email: dale.cendali@kirkland.com

Counsel for Plaintiffs

Emily Reisbaum
Nicole Gueron
Ashleigh Hunt
Emily A. Weissler
Clarick Gueron Reisbaum LLP
220 Fifth Avenue, 14th Floor
New York, NY 10001
Phone: (212) 633-4310
Fax: (646) 478-9484
Email: ereisbaum@cgr-law.com

Counsel for Defendant

IT IS SO ORDERED this ____ day of _____, 2020.

VALERIE E. CAPRONI
United States District Judge