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October 3, 2019

## Via ECF

Hon. Valerie E. Caproni  
United States District Court for the  
40 Foley Square, Room 240  
New York, NY 10007

Re: *Chronicle Books, LLC v. Audible, Inc.*, No. 1:19-cv-07913-VEC

Dear Judge Caproni:

We represent the plaintiff publishers in the above-referenced litigation. We write in response to the letter filed by Audible earlier today. As Your Honor is aware, the parties have been discussing your suggestion at the September 25, 2019 hearing that, if Audible agreed to be preliminarily enjoined during the pendency of this lawsuit (*i.e.*, if Audible agreed to provide Publishers' requested relief voluntarily), a ruling on Publishers' motion for a preliminary injunction (the "Motion") may not be necessary and the parties could instead focus their efforts on an expedited, final resolution.

Publishers were surprised by Audible's letter. The parties have been discussing these issues since last week, and Publishers sent a detailed case management proposal to Audible on October 1, 2019 that provided that, if Audible stipulated to the relief sought in Publishers' order to show cause, the parties could proceed with expedited discovery and a resolution on the merits. As Publishers had not heard back from Audible, we sent Audible's counsel an email at 9:07 a.m. today asking whether Audible intended to respond. At 11:27 a.m., Audible responded to our email by stating that "it appears we cannot reach agreement on next steps. Accordingly, the parties should advise the Court as they see fit." Audible filed its letter approximately fifteen minutes later.

Audible's race to the Courthouse does not reflect any of the discussions between the parties or the Court's desire to resolve this case expeditiously. It, however, does make one thing clear: Audible does not agree to stipulate to the preliminary injunction. All Audible is offering is what was already ordered, not to release Distributed Text for Publishers' works until the Motion is decided. As a result, Publishers see no reason to further delay resolution of the Motion. Thus,

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Publishers respectfully request that the Court decide the Motion based on the record before it. In any case, the Motion to Dismiss would need to be resolved before the case proceeds.

As to Audible's proposal that Publishers should be required to engage in settlement talks, that proposal is not workable for reasons already communicated to Audible by each of the Publishers. The proposal seems intended to delay a prompt resolution rather than settle the case. Publishers do not believe it appropriate to discuss settlement in public filings, and find it curious Audible wishes to pursue settlement now after rebuffing each of the Publisher's requests that Audible stop before filing the lawsuit, but suffice to say that the parties specifically discussed a framework for such possible discussions that Audible rejected. Consequently, Publishers believe that settlement talks at this time would be a waste of the parties' and the Court's resources. Moreover, the parties are fully capable of engaging in settlement discussions without compromising an earlier resolution of this case. If at some point they believe it would be mutually beneficial for the Court to assist in those talks, the parties always can jointly inform the Court.

Sincerely,

*/s/ Dale Cendali, P.C.*

Dale Cendali, P.C.