



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

AUG 06 2010

MEMORANDUM FOR: Kevin Griffis
Director of Public Affairs
Office of Public Affairs

FROM: Barbara S. Fredericks *BSF*
Assistant General Counsel
for Administration

SUBJECT: Amendment to iTunes U Content/Services Agreement between the
Department of Commerce and Apple, Inc.

This provides clearance on the attached Amendment to the iTunes U Content/Services Agreement between the U.S. Department of Commerce and Apple, Inc. ("Apple") for use of the iTunes U service. iTunes U is a web-based service, much like an online store, that enables its account holders to post educational, digital content retrievable by a designated community or the public. A user selects and downloads posted content that may be viewed on a Mac or PC computer, iPod, or iPhone. Our office cleared a Department-wide agreement with Apple for this service on November 7, 2008 and which was signed December 1, 2008.

Under the terms of the underlying agreement, Apple agreed to permit the Department to establish iTunes U accounts, which would facilitate the posting of "Podcasts" and other educational content on the iTunes U platform. In March 2010, however, when the National Oceanic and Atmospheric Administration (NOAA) attempted to establish its own page, Apple requested that NOAA execute a separate iTunes U agreement. Apple interprets the existing underlying agreement only to permit a Department iTunes U page. Apple does not interpret the agreement to allow for separate bureau specific pages to be established, although that was our intent when negotiating with Apple.

The amendment modifies the underlying agreement to cover the use of iTunes U by the Department as well as authorized bureaus (referred to in the amendment as "Authorized Agencies") within the Department. The amendment also provides an attachment that must be completed with the name of each authorized Department bureau that launches its own iTunes U page. The attachment may be updated periodically as interested bureaus sign up for accounts.

Directions for executing the amendment:

Please contact Katie Walton, Marketing Manager for Education Apps, Apple, Inc., to arrange for signing the amendment and completing the attachment with bureaus interested in establishing an iTunes U page. Ms. Walton may be reached by any of the following: 408-862-2426 (office phone), 917-678-3065 (iPhone), or kw Walton@apple.com.

If you have any questions regarding this matter, please contact Sarah Schwartz of my staff at (202) 482-8038.

Attachment

cc: Lawrence Charters
Ron Jones
Rand Ruggieri
Carolyn Hammersmith
Bradley Akamine

APPLE INC.

SYSTEM AMENDMENT TO
ITUNES U CONTENT/SERVICES AGREEMENT – PUBLIC/PRIVATE CONTENT

This System Amendment ("this Amendment") to the Content/Services Agreement ("the Agreement"), effective as of the date both parties have signed below, is made and entered into by and between Apple Inc., a corporation organized under the laws of the State of California with offices at 1 Infinite Loop, Cupertino, CA 95014 ("Apple"), and the organization or entity executing this Amendment ("Content Provider").

WHEREAS, Apple and Content Provider wish to amend the Agreement to make Content Provider's rights and obligations applicable to all authorized federal government agencies on whose behalf Content Provider is authorized to act,

NOW, THEREFORE, in consideration of the mutual promises and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Agreement will be construed to bestow Content Provider's rights and impose all of Content Provider's obligations on the Authorized Agencies, as defined below. To the extent this Amendment conflicts with the Agreement, this Amendment controls, but the Agreement is to be construed generally in accordance with this section to effectuate its intent.

2. The Agreement is amended as follows:

2.1 Add section 1.1, reading: "**Authorized Agencies**' means any related federal government agency or department within Content Provider's system, as set forth in Exhibit A to this Amendment."

2.2 Renumber all succeeding subsections in section 1, seriatim.

2.3 Revise renumbered section 1.10 to read: "**Content Provider Website**' means the web page on the Content Provider's primary website or on any Authorized Agencies website that provides access to the iTunes U Site. The Content Provider Website's presentation of access to the iTunes U Site shall be subject to Apple approval, which shall not be unreasonably withheld."

2.4 Revise section 3.2 to read: "In the event that Content Provider or any Authorized Agency utilizes

excessive or unreasonable resources (e.g., bandwidth) in connection with the iTunes U Site, Apple shall have the right to take all necessary steps to reduce the resources used, including but not limited to removing Content and denying access to the iTunes U Site to Content Provider or the Authorized Agency. In the event that Apple takes steps to reduce the resources, it shall use its commercially reasonable efforts to notify Content Provider or the Authorized Agency via email within ten (10) days of doing so."

2.5 Revise the first sentence of section 7 by adding: "and each Authorized Agency's" between "Content Provider's" and "use of the iTunes U Site."

2.6 Revise section 9.4 by adding a new second sentence reading: "Content Provider shall provide Apple with a notice address for each Authorized Agency."

3. Other than as modified by this Amendment, the Agreement remains in full force and effect, in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the dates shown below their signatures.

APPLE INC.

By: Katherine Klass
Print Name: Katherine Klass
Title: Contract Mgr
Date: 9/29/10

CONTENT PROVIDER

By: [Signature]
Print Name: KEVIN GRIFFS
Title: Dir. of Public Affairs
Date: 9/27/10

**Exhibit A
SYSTEM AMENDMENT TO
ITUNES U CONTENT/SERVICES AGREEMENT - U.S. DEPARTMENT OF COMMERCE**

List of Authorized Agencies

| | Authorized Agency | Authorized Agency Address | Authorized Agency Contact Person (If different than Content Provider Contact Person) |
|----|-------------------|--|---|
| 1 | NOAA | 1305 EAST-WEST HWY #9649 Silver Spring, MD 20910 | Name: LAWRENCE CHARTERS Phone No.: 301-713-3000 ext 134 Email address: lawrence.charters@noaa.gov |
| 2 | | | Name: Phone No.: Email address: |
| 3 | | | Name: Phone No.: Email address: |
| 4 | | | Name: Phone No.: Email address: |
| 5 | | | Name: Phone No.: Email address: |
| 6 | | | Name: Phone No.: Email address: |
| 7 | | | Name: Phone No.: Email address: |
| 8 | | | Name: Phone No.: Email address: |
| 9 | | | Name: Phone No.: Email address: |
| 10 | | | Name: Phone No.: Email address: |
| 11 | | | Name: Phone No.: Email address: |