

1. Transfer and Opt Out

Subject to paragraph 2 below, all PII of Debtors (including subject matter information relating to PII under the VPPA but not including title information thereunder) shall be transferred to the Buyer in accordance with the terms of the Purchase Agreement, regardless of (a) when collected, (b) whether the customer previously opted out of receiving marketing messages from Debtor or (c) any other consideration, provided however, that prior requests by consumers who are Debtor customers to opt out of receiving marketing messages from the Debtor will be honored by the Buyer after the transfer, even if the consumer does not opt out of the general transfer of the information, unless the consumer is also a Buyer customer and did not opt-out of marketing messages.

Buyer will provide all consumers who are Debtors customers whose PII is so transferred with the right to opt out of the transfer.

2. PII under VPPA

Title information will not be transferred; only subject matter information will be transferred (subject to the general opt-out right described above). Such subject matter information will be used exclusively for marketing goods and services directly to consumers. For clarity, all PII not covered under the VPPA and customer names, e-mail addresses and other data unrelated to the title of audio visual materials will be transferred.

3. Mechanics/Timing of Transfer and Opt-Out

Subject to paragraph 2 above, all PII to be transferred will be transferred to Buyer at the closing (on or prior to 9/30/11).

On or within one business day after the closing date, Buyer will cause an e-mail (the “opt-out notice”) to be sent to all former Borders customers whose PII was transferred notifying them of the transfer and that they have the right to opt out. The Buyer will provide the Committee and the Consumer Privacy Ombudsman with an advance copy of the opt-out notice and the opportunity to provide comments thereon, which the Buyer will consider in its good faith discretion. The opt-out notice must clearly and conspicuously disclose (a) the transfer of the PII and the opportunity to opt out; (b) the PII will be subject to Barnes & Noble privacy policy on the date of the transfer (which is subject by its terms to change from time to time); and (c) the subject matter of DVD and other video purchases will be part of the transferred information. The e-mail may contain whatever “customer friendly” content (including discounts or other promotional offers) as Buyer deems appropriate in its sole discretion, and shall contain a link to the Barnes & Noble privacy policy.

Opt-out period will be a period of 15 calendar days from the opt-out notice.

In order to provide practicable privacy protections for Borders' customers whose e-mail address is not live and who did not receive notice via e-mail (the PII of those customers, hereafter "specified transferred PII"), notice of transfer and opt out right will also be prominently and continuously displayed in a clear and conspicuous fashion on both Barnes & Noble (www.barnesandnoble.com) and Borders (www.borders.com) websites for a period of 30 calendar days from the date of first display. These Borders customers will have 30 days from the date of first display to opt out by contacting Buyer in accordance with the directions specified in the opt-out notice.

During the opt-out period, Buyer will not use any of the transferred PII for any purpose other than to verify transfer of data from Debtors to Buyer and to conduct the opt-out process and will employ appropriate information control procedures to segregate the transferred PII from other PII possessed by Buyer. For clarity, Buyer may verify that the data transferred is the data that it contemplated to be transferred under the Agreement and the segregation may be within the same database but separate tables.

Promptly (and in any event within 5 calendar days after the end of the opt-out period) Buyer will purge all transferred PII for any Borders customer who has timely exercised his or her opt-out right (for greater certainty, Buyer is NOT required to purge any PII it possessed with respect to any customer who was a Barnes & Noble customer prior to the transfer of the Borders customer PII; ONLY the PII received from Borders must be purged).

Notice of transfer and opt out right will also be published in the *USA Today* in a clear and conspicuous fashion in a full-page notice (the costs of which will be split 50/50 by Buyer and Debtors), which notice shall include at least all the information required in the opt-out email discussed above.

Buyer will not use any of the specified transferred PII for any purpose other than to verify transfer of data from Debtors to Buyer and to conduct the opt-out process described herein during the period of 15 calendar days from the date of first display of website/*USA Today* notice of transfer and opt-out right and will purge all specified transferred PII for any Borders customer who has exercised his or her opt-out right in the 30-day specified transferred PII notice period in accordance with the timing specified in the second preceding paragraph (subject to the "for greater certainty" parenthetical therein).

Barnes & Noble will safeguard all PII in a manner consistent with industry standard data security protections and applicable information security laws.

Barnes & Noble will purge any PII for which it determines it has or may have no reasonable business need.

Buyer shall submit to the Court an affidavit of compliance substantially in the form of Annex I hereto certifying as to its compliance with the requirements set forth in this section 3 reasonably promptly following the latest date by which all opt-out PII must be purged per the foregoing paragraphs.