

Apple Inc.
iPhone SDK Agreement
Internal Use Only; No Redistribution

PLEASE SCROLL DOWN AND READ ALL OF THE FOLLOWING TERMS AND CONDITIONS CAREFULLY BEFORE USING THE SOFTWARE. THIS IS A LEGAL AGREEMENT BETWEEN YOU AND APPLE. IF YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS, CLICK THE "AGREE" BUTTON OR CHECK THE BOX DISPLAYED AT THE END OF THIS AGREEMENT IF YOU ARE READING THIS ON AN APPLE WEBSITE. BY CLICKING "AGREE", CHECKING THE BOX OR BY DOWNLOADING, USING OR COPYING ANY PART OF THIS SDK, YOU ARE AGREEING ON YOUR OWN BEHALF AND/OR ON BEHALF OF YOUR COMPANY TO THE TERMS AND CONDITIONS STATED BELOW.

IF YOU DO NOT OR CANNOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU CANNOT USE THIS SDK. DO NOT DOWNLOAD OR USE THIS SDK IN THAT CASE.

1. Definitions

Whenever capitalized in this Agreement:

"Agreement" means this iPhone SDK Agreement.

"App Store" means an electronic store and its storefronts branded, and owned and/or controlled by Apple or an affiliate of Apple.

"Apple" means Apple Inc., a California corporation with its principal place of business at One Infinite Loop, Cupertino, California 95014, U.S.A.

"Application" means one or more software programs developed by You in compliance with the Documentation and the Program Requirements, under Your own trademark or brand, and for specific use with the Apple iPhone and/or the Apple iPod touch, including bug fixes, updates, upgrades, modifications, enhancements, supplements to, revisions, new releases and new versions of such software programs.

"Authorized Users" means Your employees and contractors or, if You are an educational institution, Your faculty and staff who (a) each have an active and valid Registered iPhone Developer account with Apple, (b) have a demonstrable need to know or use the SDK in order to develop and test Applications, and (c) to the extent such individuals will have access to Apple Confidential Information, each have written and binding agreements with You to protect the unauthorized use and disclosure of such Apple and third party confidential information.

"Documentation" means any technical or other specifications or documentation that Apple may make available or provide to You relating to or for use in connection with the SDK.

"FOSS" (Free and Open Source Software) means any software that is subject to terms that, as a condition of use, copying, modification or redistribution, require such software and derivative works thereof to be disclosed or distributed in source code form, to be licensed for the purpose of making derivatives works, or to be redistributed free of charge, including without limitation software distributed under the GNU General Public License or GNU Lesser/Library GPL.

"iPhone Developer Program License Agreement" means a separate agreement that may be entered into between You and Apple regarding the provisioning of test devices for Your Applications, and submission of Your Application for approval and digital signing by Apple, among other things.

APPLE v. ACHATES
Case No. IPR2013-00080
Case No. IPR2013-00081

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“Program Requirements” mean the technical, human interface, design, product category, security, performance, and other criteria and requirements specified by Apple, including but not limited to the current set of requirements set forth in Section 3.3, as they may be modified from time to time by Apple in accordance with this Agreement.

“Published API(s)” means the Apple-documented Application Programming Interface(s) contained in the SDK.

“SDK” (Software Development Kit) means the Documentation, software (source code and object code), applications, sample code, simulator, tools, libraries, APIs, data, files, and materials provided or made available by Apple for use by You in connection with Your Application development, and includes any Updates that may be provided or made available by Apple.

“Term” means the period described in Section 7.

“Updates” means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or versions of the SDK, or to any part of the SDK.

“You” or “Your” means the person(s) or entity using the SDK or otherwise exercising rights under this Agreement. If You are entering into this Agreement on behalf of Your company or educational institution, “You” or “Your” refers to your company or educational institution as well.

2. SDK Internal Use License and Restrictions

2.1 Confidential Nature of Pre-Release SDK

From time to time during the Term, Apple may provide You with pre-release versions of the SDK that constitute Apple Confidential Information and are subject to the confidentiality obligations of this Agreement. Such pre-release versions of the SDK should not be relied upon to perform in the same manner as a final-release commercial-grade product, nor should they be used with data that is not sufficiently and regularly backed up. Distribution of Applications created with the SDK is not permitted absent a separate agreement with Apple.

2.2 Permitted Uses and Restrictions

Subject to the terms and conditions of this Agreement, Apple hereby grants You during the Term, a limited, non-exclusive, personal, revocable, non-sublicensable and non-transferable license to:

- (a) Install a reasonable number of copies of the SDK on Apple-branded computers owned or controlled by You, to be used internally by You or Your Authorized Users for the sole purpose of developing or testing Applications; and
- (b) Make and distribute a reasonable number of copies of the Documentation to Authorized Users for their internal use only and for the sole purpose of developing or testing Applications.

You understand that Applications developed using these SDK materials cannot be installed or used on the iPhone or iPod touch. Applications must be approved and signed with an Apple-issued certificate before they can be tested on the iPhone or iPod touch, pursuant to a separate iPhone Developer Program License Agreement. Apple reserves the right to approve or withhold approval and signing of any Application at its sole discretion. Apple shall not be responsible for any costs, expenses or other liabilities You may incur as a result of Your Application development or use of this SDK.

2.3 Copies

You agree to retain and reproduce in full the Apple copyright, disclaimers and other proprietary notices (as they appear in the SDK and Documentation provided) in all copies of the SDK and Documentation that you are permitted to make under this Agreement.

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2.4 Ownership

Apple retains all rights, title, and interest in and to the SDK and any Updates it may make available to You under this Agreement. You agree to cooperate with Apple to maintain Apple's ownership of the SDK, and You agree to promptly provide notice of any claims relating to the SDK. The parties acknowledge and agree that Apple shall not acquire any ownership interest in or to any of Your Applications.

2.5 No Other Permitted Uses

You agree not to rent, lease, lend, upload to or host on any website or server, sell, redistribute, or sublicense the SDK, in whole or in part, or to enable others to do so. You may not use the SDK for any purpose not expressly permitted by this Agreement. You agree not to install, use or run the SDK on any non-Apple-branded computer, or to enable others to do so. You may not and You agree not to, or to enable others to, copy (except as expressly permitted under this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, decrypt, or create derivative works of the SDK or any services provided by the SDK, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law, or to the extent as may be permitted by licensing terms governing use of open-sourced components or sample code included with the SDK). You agree not to exploit any services provided by the SDK in any unauthorized way whatsoever, including but not limited to, by trespass or burdening network capacity. Any attempt to do so is a violation of the rights of Apple and its licensors of the SDK or services provided by the SDK. If You breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses not expressly granted in this Agreement are reserved and no other licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise. This Agreement does not grant You any rights to use any trademarks, logos or service marks belonging to Apple, including but not limited to the iPhone or iPod word marks. If You make reference to any Apple products or technology, You agree to comply with the published guidelines at <http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html>, as modified by Apple from time to time.

2.6 Updates; No Support or Maintenance

Apple may extend, enhance, or otherwise modify the SDK at any time without notice, but Apple shall not be obligated to provide You with any Updates to the SDK. If Updates are made available by Apple, the terms of this Agreement will govern such Updates, unless the Update is accompanied by a separate license in which case the terms of that license will govern. Apple is not obligated to provide any maintenance, technical or other support for the SDK. You acknowledge that Apple has no express or implied obligation to announce or make available any Updates of the SDK to anyone in the future. Should an Update be made available, it may have APIs, features, services or functionality that are different from those found in the SDK licensed hereunder.

3. Your Obligations

3.1 General

You certify to Apple and agree that:

- (a) You are of the legal age of majority in the jurisdiction in which You reside (at least 18 years of age in many countries) and have the right and authority to enter into this Agreement on Your own behalf, or if You are entering into this Agreement on behalf of Your company, organization or educational institution, that You have the right and authority to legally bind Your company, organization or educational institution to the terms and obligations of this Agreement;
- (b) All information provided to Apple by You will be current, true, accurate and complete;
- (c) You will comply with the terms of and fulfill Your obligations under this Agreement and You agree to monitor and be responsible for Your Authorized Users' use of the SDK and their compliance with the terms of this Agreement; and
- (d) You will be solely responsible for all costs, expenses, losses and liabilities incurred, and activities undertaken by You and Authorized Users in connection with the SDK, Your Applications and Your related development efforts.

3.2 Use of the SDK

As a condition to using the SDK, You agree that:

- (a) You will only use the SDK for the purposes and in the manner expressly permitted by this Agreement and in accordance with all applicable laws and regulations;
- (b) You will not use the SDK for any unlawful or illegal activity, nor to develop any Application which would commit or facilitate the commission of a crime, or other tortious, unlawful, or illegal act;
- (c) Your Application will be developed in compliance with the Documentation and the Program Requirements, the current set of which is set forth in Section 3.3 below;
- (d) To the best of Your knowledge and belief, Your Application does not and will not violate, misappropriate, or infringe any copyright, patent, trademark, trade secret, rights of privacy and publicity, or other proprietary or legal right of any third party or of Apple; and
- (e) You will not, through use of the SDK or otherwise, create any Application or other program that would disable, hack or otherwise interfere with any security, digital signing, digital rights management, content protection, verification or authentication mechanisms implemented in or by the iPhone operating system software, iPod touch operating system software, this SDK, or other Apple software, services or technology, or enable others to do so.

3.3 Program Requirements for Applications

Any Application developed using this SDK must comply with these criteria and requirements, as they may be modified by Apple from time to time:

APIs and Functionality:

3.3.1 Applications may only use Published APIs in the manner prescribed by Apple and must not use or call any unpublished or private APIs.

3.3.2 An Application may not itself install or launch other executable code by any means, including without limitation through the use of a plug-in architecture, calling other frameworks, other APIs or otherwise. No interpreted code may be downloaded and used in an Application except for code that is interpreted and run by Apple's Published APIs and built-in interpreter(s).

3.3.3 Without Apple's prior written approval, an Application may not provide, unlock or enable additional features or functionality through distribution mechanisms other than the App Store.

3.3.4 An Application may write data on a device only to the Application's designated container area, except as otherwise specified by Apple.

User Interface and Data:

3.3.5 Applications must comply with the Human Interface Guidelines and other Documentation provided by Apple.

3.3.6 Any form of user or device data collection, or image, picture or voice capture or recording performed by the Application (collectively "Recordings"), and any form of user data, content or information processing, maintenance, uploading, syncing, or transmission performed by the Application (collectively "Transmissions") must comply with all applicable privacy laws and regulations as well as any Apple program requirements related to such aspects, including but not limited to any notice or consent requirements. In particular, a reasonably conspicuous visual indicator must be displayed to the user as part of the Application to indicate that a Recording is taking place.

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Location Services and User Privacy:

3.3.7 For Applications that use location-based APIs or that collect, transmit, maintain, process, share, disclose or otherwise use a user's personal information:

- You and the Application must comply with all applicable privacy and data collection laws and regulations with respect to any collection, transmission, maintenance, processing, use, etc. of the user's location data or personal information by the Application.
- Applications may not be designed or marketed for the purpose of harassing, abusing, stalking, threatening or otherwise violating the legal rights (such as the rights of privacy and publicity) of others.
- For Applications that use location-based APIs, such Applications may not be designed or marketed for real time route guidance; automatic or autonomous control of vehicles, aircraft, or other mechanical devices; dispatch or fleet management; or emergency or life-saving purposes.
- Applications may not use any robot, spider, site search or other retrieval application or device to scrape, retrieve or index services provided by Apple or its licensors, or to collect information about users for any unauthorized purpose.

3.3.8 Applications that offer location-based services or functionality must notify and obtain consent from an individual before his or her location data is being collected, transmitted or otherwise used by the Application.

3.3.9 Applications must not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like intended to notify the user that the user's location data is being collected, transmitted, maintained, processed or used, or intended to obtain consent for such use. If consent is withheld or withdrawn, Applications may not collect, transmit, maintain, process or utilize the user's location data.

Content and Materials:

3.3.10 Any master recordings and musical compositions embodied in Your Application must be wholly-owned by You or licensed to You on a fully paid-up basis and in a manner that will not require the payment of any fees, royalties and/or sums by Apple to You or any third party. In addition, if Your Application will be distributed outside of the United States, any master recordings and musical compositions embodied in Your Application (a) must not fall within the repertoire of any mechanical or performing/communication rights collecting or licensing organization now or in the future and (b) if licensed, must be exclusively licensed to You for Your Application by each applicable copyright owner.

3.3.11 If Your Application includes or will include any other content, You must either own all such content or have permission from the content owner to use it in Your Application.

3.3.12 Applications must not contain any obscene, pornographic, offensive or defamatory content or materials of any kind (text, graphics, images, photographs, etc.), or other content or materials that in Apple's reasonable judgment may be found objectionable by iPhone or iPod touch users.

3.3.13 Applications must not contain any malware, malicious or harmful code, program, or other internal component (e.g. computer viruses, trojan horses, "backdoors") which could damage, destroy, or adversely affect other software, firmware, hardware, data, systems, services, or networks.

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