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LITIGATION III, ANTITRUST DIV.  
U.S. DEPT OF JUSTICE

June 7, 2012

Dear Mr. Read,

Thank you for gathering public comments regarding the DOJ's civil suit against five publishers and Apple for "colluding" to institute agency pricing.

I am the owner of an independent bookstore, and I was shocked by the DOJ's action. It seemed completely wrong-headed, and could not have been better designed to drive me and people like me out of the e-book industry, thus reducing competition, not enhancing it. I was (and am) not in a position to do what Amazon was doing. That one predatory company was losing millions of dollars annually, selling e-books below cost in an apparent effort to drive growth in, and ultimately control, a new market. Only when the agency plan was adopted by most major publishers was it possible for other retail booksellers to enter the nascent e-book market.

Instead of investigating monopolistic behavior, the DOJ decided to punish the victims. The victims in this case are publishers, bookstores, authors, and, ultimately, consumers.

The agency plan was the only natural response to Amazon's predatory behavior, and it is the only logical model for the sale of e-books.

The agency plan is a compensation model. No prices are established or fixed. Physical books and e-books continue to be priced at various levels in response to a variety of factors. Only two things are different under the agency model: publishers make less money on e-books, and the money they aren't making is going straight to Amazon, whom they are forcing to take a profit. Why either outcome is presumed to have involved illegal behavior is beyond me. Any conspiracy that results in the conspirators making less money is a strange one indeed.

The agency plan is the best model for e-books for this reason: it describes what is happening. Retailers like Amazon and Gibson's do not order ebooks or pay to keep them in inventory. All we do is publish lists of titles and take orders. We are selling them on consignment for the real sellers: publishers (including authors). Why should a retailer like Amazon be able to set the price on a product they don't own, over the objections of the owners? Why should they be allowed to sell the property of others below cost in an effort to drive sales of their proprietary technology and control a new market? The agency model serves to prevent them from doing all that, while establishing a level playing field to benefit Amazon and all other retailers. The agency model also ensures that publishers will be able to continue to develop and nurture authors both new and old, thus providing for a healthy future for literary culture in the U.S. If the lowest prices are your highest value, that will no longer be possible, and soon consumers, who benefit temporarily from low prices, will suffer from a lack of quality product. And there is no guarantee those prices will stay low under an effective monopoly, or that Amazon cares about literary culture.

I understand that dinners were had and emails were exchanged. Even if you must punish certain publishers for appearing to act in collusion, please do not throw out the inevitable outcome of this supposed collusion, the agency plan, which benefits everyone in the publishing ecosystem other than one rogue, monopolistic retailer.

Sincerely yours,

Michael Herrmann  
President