

From: Brenna Lyons [mailto:lyonsden41[REDACTED]]
Sent: Thursday, June 14, 2012 10:02 AM
To: Read, John
Cc: d[REDACTED]
Subject: DOJ case against price fixing in ebooks

Mr. Read,

I have been in the ebook industry for the last decade, as both an author and an industry professional, so please believe me when I tell you that I am not coming to you at all uninformed about the subject of ebook pricing. I would like a moment of your time to discuss the current case against Apple and the "Big 5" with you.

The assumptions I have seen tossed about in your preliminary findings are that the Big 5 are doing very real damage to the industry and to customers by their pricing, that they are artificially raising the expectations of ebook prices in the minds of readers and industry members. While I do not agree with their pricing structure for fiction novels, and it flies in the face of the standards readers have come to expect from dealing with independent publishing for coming up on the last two decades of ebook pricing, I fail to see how this is hurting anyone in the long run except the publishers in question (and in the short run, disappointed customers). Any time there is unrest in the publishing industry, readers are always disappointed, which I don't like to see. of course. Back to the subject... Those publishers would eventually find themselves priced out of the market and have to either abandon their pricing structures or abandon ebook publishing entirely. I'm betting they would do the former. The free market allows for people to price too high and have this happen. It's not as if the American customers can't get a print copy of the book instead of paying an unacceptable price for the ebook. Granted, overseas customers have a more difficult time, since they would have to wait for distribution of the print title to their areas, but since the Big 5 also delay that, all things really are equal.

As Mr. Corker of Smashwords has so eloquently demonstrated, the pricing (bad pricing, I do believe) by the Big 5 is not affecting other publishing ventures. It's not changing the industry for the worse. It represents ONLY the Big 5, and it is a self-correcting matter, if the free market were allowed to operate as it naturally does, without interference. Nor is it changing reader expectations of ebook prices. The very fact that you have had such a reader outcry shows that readers expect the pricing independent publishing forged long ago. Conglomerate publishers are balking at the established pricing model, but that doesn't mean readers accept it quietly...or that independent publishers accept it at all.

No offense to the esteemed members of the Department of Justice, but you clearly don't know independent publishers very well if you really believe we are, in any way, swayed by the operations of the conglomerate publishers. We don't follow the lead of

conglomerate publishing. We lead, because we have the ability to turn on a dime and we thrive on looking for things overlooked by the conglomerate publishing houses. Trying to turn the Big 5 is like trying to turn an ocean liner or a train, and they have already admitted to using us as their test markets. Conglomerate publishing followed us into new genre markets, followed us into the ebook industry, followed us into using POD publishing as an alternative to mass market runs, warehousing, and waste. Perhaps, given time, they would follow us into the pricing we pioneered so long ago. Harlequin's Carina Press has already shown a tremendous grasp of the power of the independent e-publishing model. Kudos to them for it.

So I ask you... Why in the world would you think we would follow them into a pricing structure that we dismissed two decades ago? We haven't and won't. Despite public opinion, the only thing conglomerate publishing controls is themselves. When my first novel-length ebook released in early 2003, it was priced at \$6. Today, I have close to five dozen ebooks selling. The most expensive of them is \$7 (for a 123,000 word book) and the least expensive is free, pricing at or below mass market for a fiction novel of similar length and genre. These ebooks are placed with a total of seven publishing houses, two of which are not inside the US. Over the years, I have worked with 12 independent publishing houses (indie/e/p), and as a reader, I purchase from several dozen publishing houses. The institution of conglomerate pricing and agency model have not increased the price I pay for books or offer books for. A database of my books, their word counts, and their prices show that the full list of my current releases (59 books) average \$3.42 and 42215 words, the books that aren't free reads (53 books) average \$3.81 and 46581 words, and the novel-length books only (50,000 words and above...20 books...none of them free reads) average \$5.05 and 92900 words per book, longer but less expensive than the average conglomerate novel.

If you want to know the real problems I see in the industry, it isn't conglomerate pricing or agency model pricing. I have a few self-published books that are on agency pricing, but most of mine aren't. Personally, I could take it or leave it.

The real problem? A functional system for ebooks would allow distribution channels to discount prices on ebooks (not raise the prices we set, because we want to protect our readers), BUT only if they remit the full agreed upon portion to the author or publisher (the agreed upon percentage on the cover price the author or publisher sets), UNLESS the author or publisher agrees to a sale price or free book offering. In other words, when the distribution channel asks to have a sale in advance and we agree, the distribution channel and author/publisher share in the discount given to a customer; when the distribution channel decides to have a sale independently, it's their loss leader, and they remit the full amount due to the publisher or author. Despite the misinformation put out there, I assure you that not every distribution channel operates in this manner. I have nothing against sales for readers, but I cannot approve of distribution channels that undercut at the expense of my earnings. If all distribution channels operated in this manner, most of the independent publishers I deal with on a

daily basis would have no problems with discounts. The way things work at some channels today is imposing their business decisions on my livelihood and taking no risk personally.

I enter into contracts with certain expectations of return; any decent businessperson does, and undermining of that will only force people out of the market and limit choices for readers. Further, I expect equitable treatment from business partners. Some "business partners" play the 2000 lb gorilla in the room, which is decidedly not good for the industry at all.

Brenna Lyons