



THE ZACK COMPANY, INC.
Literary Representation

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John R. Read
Chief, Litigation III Section
United States Department of Justice
450 5th St NW, Suite 4000
Washington DC 20530

Dear Mr. Reed:

I am writing to you as a long-time member of the publishing community, a literary agent, and a publisher. In addition to the Zack Company, Inc., I also own and operate Author Coach, LLC, which publishes books as Endpapers Press.

Like all of the publishing world, I have followed the lawsuits against publishers on behalf of Amazon.com. Yes, I say “on behalf of,” as surely anyone would be naïve to think that these lawsuits would not have originated without efforts of those in the employ of or seeking favor with Amazon.com.

My literary agency represents dozens of authors and their titles and as an agent I have followed the growth of the electronic-book marketplace since we were arguing about rights to books on CD-ROM.

For years, the publishing industry has been under attack by the very companies that profit from the sale of books. This includes superstores such as Barnes & Noble, which used predatory pricing practices to destroy hundreds—if not thousands—of small independent bookstores. And it includes big-box stores such as Wal-Mart and Costco. Each of these sellers demanded higher and higher discounts from publishers so that it could offer books at greater and greater discounts to readers. This, in fact, resulted in higher prices on books, as publishers had to raise the retail price from which they were discounting in order to satisfy the demands of Barnes & Noble and the big-box stores.

Then came Amazon, which also demanded deeper and deeper discounts, contributing to higher prices. But Amazon plays a longer game, perhaps because it has a healthier stock price than other sellers or simply a different model. When it developed the Kindle, it became determined to sell more Kindles. Kindles were the delivery device, a proprietary piece of equipment. It didn't allow just anyone to produce content for the Kindle, just as Apple has never allowed just anyone to produce content or software for the Mac or the iPad, etc.

But what Amazon did do with the Kindle is try to ensure that it didn't die off because of a lack of content or because that content was too expensive. In a sense, this was a brilliant strategy, yet it was also an opportunistic and cannibalistic strategy. Opportunistically, it took advantage of consumers by selling them relatively expensive hardware, but promised cheap content. But that cheap content did not exist. eBooks were really no less expensive than real books. So Amazon artificially lowered the price of eBooks, taking a loss on each one sold. This, of course, created the expectation in the mind of consumers—and apparently in the mind of the DOJ—that eBooks should be cheaper than real books, considerably cheaper.

As one who has been publishing eBooks, I can say without a doubt that publishing eBooks is really no easier than publishing paper books. Yes, you eliminate paper, printing, and binding, but these costs are a couple of dollars of a \$25 hardcover, not two-thirds of the cover price. Yet Amazon was selling the eBooks of \$25 hardcovers for \$9.99. This was a loss leader and done at the expense of publishers, agents, booksellers, and, most of all, authors, as it led consumers to feel that eBooks should be more than half the price of printed books.

Most authors already make far, far less than minimum wage. For every *New York Times* best-selling author, there are probably 10,000 authors who have barely made \$5,000 off sales of their books.

When Apple entered the fray with the iPad and their plan to sell eBooks on the same model used for other products on the iTunes store—the Agency Model—it presented a better option to publishers. Did publishers “collude”? I do not know. Did they consult, as one physician consults with another to confirm a diagnosis or treatment, to make sure that they weren't missing something about the Apple plan that would hurt them and authors even more than Amazon's model was already doing? I do not know. But I do know that breaking Amazon's near monopoly on the eBook business has been a good thing. There are thousands of eBooks for sale at very reasonable prices. There are likely thousands that are free. And the cost of ownership of eBook readers has come down from hundreds of dollars to \$79 (according to the commercial I saw last night for the Kindle). *Competition has thrived* because of the introduction of the iPad and Agency Model for eBooks. It has not been stifled.

From my perspective as an agent and as a publisher, the only party that has suffered from the introduction of the Agency Model is Amazon, as its plans to devalue the intellectual property of authors and to drive down the price of eBooks in order to sell its Kindle devices, which are really a handheld platform to sell more products from Amazon first and an eBook reader second, were stifled.

The proposed settlement between the DOJ and publishers would allow for a resumption of predatory discounting of my clients' most important and profitable works—the new ‘frontlist’ and best-selling titles—and undermines the growth of a competitive marketplace for books. It seems to me irrational that the Department of Justice would choose to interfere in a functioning marketplace where consumers can choose from a broad array of titles with huge differential in prices and formats. My clients and I do not want to return to an environment in which their intellectual property is irrationally priced in order to stifle innovation and harm consumer choice.

I urge you to reject the proposed settlement and allow the market to return to one that protects the value of authors' intellectual property from unfair and predatory discounting. This will protect and encourage broader competition among all booksellers, will allow the consumer the protection of a range of choices in format, price, and retailer, and will encourage digital innovation in the burgeoning field of eBook publishing and retailing.

Thank you.

Best wishes,

A handwritten signature in black ink, appearing to read "Andrew H. Zach". The signature is fluid and cursive, with a long horizontal stroke extending to the right.