

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
 :  
Plaintiff, :  
 :  
v. :  
 :  
SOCIETY OF AUTHORS' REPRESENTATIVES, :  
 :  
 :  
Defendant. :  
 :  
- - - - -x

PROPOSED FINAL JUDGMENT:  
COMPETITIVE IMPACT  
STATEMENT  
Civil No. 82-CIV-4445  
Filed: July 8, 1982

The United States of America, pursuant to Section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b), submits this Competitive Impact Statement in connection with the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On , 1982, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, 15 U.S.C. § 4, alleging that the defendant Society of Authors' Representatives ("SAR") and unnamed co-conspirators had, beginning at least as early as 1976 and continuing until the filing of the complaint, engaged in a continuing combination and conspiracy to fix the rates (commissions and other fees) members of the SAR charge for their services, to prohibit advertising by members of the SAR, and to prohibit members of the SAR from soliciting each other's clients, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The complaint also alleges that as a result of the combination and conspiracy, competition among literary agencies has been restrained and authors seeking and using the services of literary agencies have been deprived of the benefits of free and open competition.

The complaint seeks an adjudication that the alleged combination and conspiracy is illegal, and an injunction

enjoining the defendant from continuing or renewing the alleged combination or conspiracy and prohibiting the defendant from fixing rates and from restricting advertising or the solicitation of clients by its members.

The Court's entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the Judgment, or to punish violations of any of its provisions.

## II

### DESCRIPTION OF PRACTICES GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS

The SAR, organized under the provisions of the New York Not-For-Profit Corporation Law, is an association of approximately 54 literary agencies which have their principal places of business in New York City. Among the members of the SAR are some of the leading literary agencies in the country.

The primary services offered by literary agencies are the negotiation of the sale of rights to an author's work and the collection of money due the author. The clients of literary agencies are authors of material for publication in books and magazines and for presentation in theaters, motion pictures and on television. The authors represented by members of the SAR are located throughout the United States and in foreign countries. The purchasers of literary material to whom the members of the SAR sell their clients' works include publishers of books and magazines, theatrical producers and motion picture and television studios. They are located throughout the United States and in foreign countries.

In 1928, the SAR adopted a set of Rules that required its members to charge specified rates for their services. That set of Rules was replaced in 1966 by a Code of Ethics that recommended that members of the SAR charge specified rates for certain of their services. Then, in 1976, the SAR



adopted a Canon of Ethics that prohibited its members from advertising and from soliciting each other's clients. During the 1970s, the SAR continued to engage in conduct that had the effect of fixing the rates its members charged for their services. It stated in "The Literary Agent," a pamphlet it publishes, that certain rates were "standard" or "customary" and identified in the pamphlet "maximum" rates charged by literary agencies. In addition, members of the SAR, acting under its auspices, have recently discussed their rates with each other and have exchanged information relating to current and future rates. The SAR has also established a Committee on Ethics and Practices to enforce the requirements and proscriptions contained in the Rules, Code of Ethics and Canon of Ethics.

### III

#### EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The parties have stipulated that the proposed Final Judgment, in the form they negotiated, may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The proposed Final Judgment states that it shall not constitute an admission by either party with respect to any issue of fact or law.

The proposed Final Judgment enjoins any direct or indirect continuation or renewal of the kind of conspiracy alleged in the complaint. Specifically, it prevents the defendant from fixing or recommending adherence to any rates or from engaging in certain specified conduct that would tend to have the effect of fixing rates. It does not, however, prevent the SAR from requiring that its members charge no rates for reading and rendering an opinion on manuscripts. It also does not prohibit the SAR from entering into an agreement with the Writers' Guild of

America or any other labor organization, pursuant to which the SAR recommends to its members that they enter into an agreement with any such labor organization if the terms of that agreement do not violate the federal antitrust laws by virtue of the exemption provided in Sections 6 and 20 of the Clayton Act and the Norris-LaGuardia Act.

The proposed Final Judgment also enjoins the defendant from restraining advertising or the solicitation of clients by its members but permits it to prohibit its members from engaging in false or misleading advertising or other advertising in violation of applicable state or federal law or from soliciting clients in violation of applicable state or federal law.

The proposed Final Judgment contains several provisions relating to the defendant's compliance with its terms. It requires the defendant to amend certain of its documents so as to eliminate language inconsistent with the provisions of the Final Judgment, to distribute copies of all amended documents to its members and employees, and to place an announcement of its abandonment of restraints on rates, advertising and solicitation in two trade publications. It also requires the defendant to send copies of the Final Judgment to its members and to applicants for membership. The proposed Final Judgment also provides methods of determining and securing the defendant's compliance with its terms. It specifies that it will be effective for ten years from the date of its entry.

The last provision states that entry of the Final Judgment is in the public interest. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditional upon a determination by the Court that it is in the public interest.



The government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violation of Section 1 of the Sherman Act alleged in the complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

#### IV

##### REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiff that might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal or equitable relief that it may have had if the Final Judgment had not been entered. The Final Judgment may not be used, however, as prima facie evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended 15 U.S.C. § 16(a).

#### V

##### PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Final Judgment should be modified may submit written comments within the 60-day period provided by the Act to Ralph T. Giordano, Chief, New York Office, Antitrust Division, United States Department of Justice, Room 3630, 26 Federal Plaza, New York, New York 10278 (Telephone: 212-264-0390). These comments and the Department's responses to them will be filed with the Court and published in the Federal Register.

All comments will be given due consideration by the Department of Justice. The Department remains free to withdraw its consent to the proposed Final Judgment at any

time prior to its entry if it should determine that some modification is necessary. Additionally, the proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court at any time during the life of the Final Judgment for interpretation, modification, or enforcement of its provisions.

## VI

### ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Final Judgment considered by the government was a full trial on the merits and on relief. The government considers the proposed Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the complaint.

## VII

### DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents were considered determinative by the government in formulating the proposed Final Judgment. Consequently, none is being filed pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b).

Dated: New York, New York

Respectfully submitted,

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