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RE: United States v. Apple, Inc., et al., 12-cv-(DLC (SDNY). Comments on Proposed Final Judgment as to Defendants Hachette, Harper Collins and Simon & Schuster.

Dear Sir,

When Penguin (my own publisher), Macmillan and Apple elected to make a stand against the DOJ, I congratulated my editor for not caving in. Though it's not the publisher's I root for. The book industry's free marketplace hangs on the brick-and-mortar store's right to fight a giant and survive. Also, I root for sanity. I don't see it here.

The Department of Justice exhibits a preferential blindness . . . or a faulty understanding of the book industry. One of those things must be true. The proposed settlement seeks to punish every retailer that is not called Amazon, and this strongly suggests an improper relationship for the following reasons.

1. No legitimate bookseller can dump books on the market, as Amazon does, year after year, at cost and below cost—not without dying off. Ergo, since no legitimate bookseller can compete . . . all of them must die. The logic is flawless.

The evidence is abundant: Once there were 7,500 independent bookstores. Now there are 1,500. The Borders chain is dead. Barnes & Noble has had its last infusion of stay-alive cash. They're next. It's not a marketplace anymore; it's a killing field.

2. Publishing houses are targeted in a legal action that can only benefit Amazon, a competitor in every form of publishing with its vanity press, and a publishing arm for established pros, as well as a POD (print-on-demand) plant.

There is court-documented evidence of Amazon's move against the small POD publishers by insisting that their books must be printed by Amazon's own plant. Insane as it seems, it told *print-on-demand* publishers to stop *printing* books or suffer the consequences of killed Buy Buttons. Amazon had such a significant market share of sales, the loss of that outlet would have meant sudden death to each one of those small publishers. They sued for the right to survive. However, all but one dropped out of the class action—unable to pay the high cost of battle with a giant. But one little guy did come shining through.

If the DOJ claims to be unaware of bully tactics on the public record, that would be a hard sell. But let's say we all agree to buy that, and we let the government slide on due diligence . . . and just assume that logic has flown. What remains is ignorance, and this will not excuse burning down the marketplace.

3. I know it's rude to point out the obvious, but no half-bright child in America can believe that "at cost" or "below cost" is the fair-market price of any book. The Agency Model allows booksellers who are not called Amazon to compete and perhaps to survive.

It's a good fight.

Sincerely,

Carol O'Connell
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