

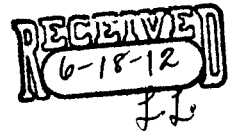
# B R A N D T & H O C H M A N

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June 14, 2012

John Read  
Chief Litigation III Section  
Antitrust Division  
U.S. Department of Justice  
450 5<sup>th</sup> Street NW, suite 4000  
Washington, DC 20530

Dear Mr. Read,

I am writing as the president of a 100+ year old American literary agency. We represent some estates of significant authors, and but for the most part we continue our tradition of taking on new writers, selling their work, broadening their readership around the world.

I am also currently the President of the AAR, the Association of Authors' Representatives, which is the largest organization of literary and dramatic agents in North America. The AAR has sent to you our letter on the lawsuit and proposed settlement on the case U.S. vs. Apple et. al. I am writing today as an independent agency owner.

I have been working in the publishing industry for 37 years, 35 of those years as a literary agent. I feel like I have lived through numerous "revolutions" in our business, but it does seem clear that the biggest of the "revolutions" was the advent of the internet, which changed the WAY books could be sold, advertised and promoted, and the rise of ebooks as a format in which our clients' content could be sold.

As an agent, my job is to protect my authors' copyrights, to license the rights to their material around the world so as to enlarge their readership, to negotiate to get them paid fairly for their work, and to advance their careers in many other ways. It is the hope of any agent that the clients will be able to afford to continue writing, and it is our duty to protect their ownership of their work and its status on the commercial market. We all want more people to buy more books, we want them to be able to browse in various ways and choose to buy the books they buy in a variety of venues, and we want to keep the value of our clients' intellectual property at a level we feel is appropriately high.

It does appear to me that the proposed settlement to this suit does not serve our interests at all, or our clients' interests, or the interests of the book buying public. First, we believe that the copyright owner and his direct licensees should have some measure of control over the pricing, i.e. the "value" of his work in all formats; books are intellectual property, creative materials, each book distinct from the others, not simple mechanical products or "widgets" which one might try to sell at lowest price to move huge number of units.

Second, we have seen clearly that our market thrives on competition, which has come in the past from a wide range of places where a reader could browse and buy his books: the independent bookstores which "hand sell" to their customers; the chain bookstores which bring a huge number of different titles into the store; the Wal-Mart type retailer which focuses on a few titles in a price-competitive way; "virtual" bookstores where the buyer can search at his own leisure, from his own home, and have books delivered to that home; and finally competitive retailers selling ebooks which are only a click away. These various venues offer different services to the buyer, and tend to sell books at various levels of discount.

I firmly believe that the settlement will promote predatory pricing by Amazon, the one enormous retailer than has consistently shown the desire to sell books at revolutionarily low prices. A move in this direction will lure customers away and take sales from the smaller venues and the stores that actually FOCUS on selling books and promoting the literary culture. It is likely to destroy the variety of the above venues where books are now sold, as only Amazon can afford to waive their margin of profits on books. The first to go will be the independent bookstores--where the main item of sale would be books—as they earn a very thin margin of profit from the sale of books. So, rather than promote competition, it will serve to in effect STIFLE the competition. It appears almost certain that this widespread deep discounting (especially on the books selling the most copies in any venue) will continue to erode the ability of brick and mortar bookstores to stay in business. In general, if we allow one major retailer to control the marketplace insofar as it is the only retailer which can afford to sell books at a loss, we will weaken and ultimately sacrifice the other retailers who concentrate on selling and promoting books and the literary culture. That would be a great loss to publishers, to authors, to readers.

Third, I believe that if the settlement were to stand we will find ourselves seeing major authors' books sold at rock-bottom prices which may sell more copies, but which would erode the actual and perceived value of their work. I believe it will affect the titles a publisher takes on and chooses to promote in the first place. An agent's goal is to sell our authors' work and get them paid fairly, but when market conditions are stressed, we find the publishers behaving more conservatively in what they agree to pay authors, and what kind of titles they choose to publish. I fear that the publishing houses will be more nervous to take on new unproven writers, more cautious when deciding whether to continue with midlist writers. I feel that Amazon does not seem terribly interested in working with others in the publishing community to support the ongoing work of publishers to maintain a healthy and creatively competitive marketplace. This, to my mind, is directly counter-productive, and does not at all protect the interests of writers, readers, and the national literary scene. I think that if the provisions of the settlement were to be instituted, we would find ourselves back in a world totally dominated by Amazon because only Amazon can afford this low low pricing, and this is all to the detriment of readers and writers alike.

I do believe that even in a time of relative financial austerity, an investment in books as entertainment provides very good value. A person can buy hard copies of books and trade them; a person can buy hours and hours of entertainment by the purchase of a book in any format. And owing to the technology of self-publishing ebooks, there is more variety than ever in the material that a consumer might be able to purchase. I feel it is essential that potential customers have numerous places to choose their books, at numerous price points, in print, digital and audio form. I do not want to see ONE major retailer so far ahead that it leaves all the others trailing in the dust. I want to preserve the precious world of brick and mortar bookshops, because shelf visibility is a key element of bringing readers together with writers. I believe the physical environment of bookstores does much to enrich our literary culture, and enhances the appeal of reading to readers of all ages, in all genres, and provides a physical venue for creative book promotions and author appearances.

I urge you to reject the proposed settlement which benefits only Amazon, and keep firmly in mind the value of the respective parts of the "food chain." We need to think of how best we can enable writers to continue their work, support publishers as they bring a range of strong texts to the attention of the reading public, and help book-buyers continue to search for a broad spectrum of books which will be sold in a variety of different kinds of venues.

Sincerely yours,



Gail Hochman

President, Brandt & Hochman Literary Agents, Inc.