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June 20, 2012

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

THE FRIEDRICH AGENCY

Dear Mr. Read,

19 West 21st Street
Suite 201
New York, NY 10010

On behalf of the seventy-four authors we represent and in support of authors and readers everywhere, we write to you imploring you reject the proposed settlement between the Department of Justice and three major publishers. As literary agents with over forty years in the business, we are just as often in conflict with publishers as we are allied with them—the only consistent interests we serve are on behalf of authors.

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It is massively frustrating to note that the ultimate accusation forming the foundation of this lawsuit (the accusation that Publishers colluded to fix e-book prices) won't be adequately dismissed until millions of dollars and years of litigation have been spent on the process of leaving no stone unturned. How convenient that Amazon isn't involved in the expense of that, but they are the only ones to benefit from it—even once the publishers have been vindicated, they'll be severely weakened by the

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massive efforts to defend themselves. All around the world we watch foreign publishing markets prepare for Amazon's entry into their territories, and we witness their gratitude at having been given the chance to learn from America's mistake. Nearly across the board, a price-fixing model is being adopted and tailored for each publishing industry. They have the unique opportunity to protect themselves, but our efforts to correct a mistake are immediately attacked by false claims and debilitating accusations. Since there's nothing we can do to prove the publishers' innocence, we'll instead turn the focus of this letter to the question of competition and debunking the misunderstandings of our marketplace.

On page four of the Complaint, the Plaintiff alleges that, as a result of the agency model, "publishers could end price competition among retailers and raise the prices consumers pay for e-books through the adoption of identical pricing tiers." Therein lies the underlying and erroneous argument of this entire case. The agency model was not a means to squeeze more money from consumers. Quite the opposite, however, the agency model was an attempt at protecting authors and all those who work on books *against* Amazon's near monopoly on the e-book market.

Please do not fall into the trap of thinking books are only worth the paper on which they're printed. How demeaning to authors everywhere who painstakingly craft their characters and storylines over years; to

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agents who read these manuscripts with one eye towards improving the prose and the other eye toward its place in the market; to editors who develop books to their fullest potential and champion them to their publishers; to copyeditors who ensure writing and punctuation is the best it can be; to publicists who put books into the hands of reviewers and book sellers with boundless energy and determination. This is only a snap-shot of the team behind a publication, to illustrate that no matter the medium—hardcover, paperback, or e-book—there are costs to take into account when pricing. Charging a blanket \$.99 or \$9.99 for every e-book without this consideration ignores the individuality of each literary product.

Authors and publishing professionals are not the only ones the agency model protects. It's also a way to bolster competition, by ensuring indie and chain booksellers (Amazon included!) don't take a loss on each book sold. Amazon can afford that, but no other retailer is prepared to combat this kind of predatory pricing. Let us not forget that, as a result of Amazon's artificially low pricing for print books, both indie and large retail brick and mortar book sellers have gone out of business. After the implementation of the agency model, however, the retailers remaining have been able to enter the e-book market, making sure Amazon isn't the only seller of e-books. As Writers House President Simon Lipskar explains in his letter, "The agency period has evidenced a remarkable explosion of competition, with new publishers, self-publishers and

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retailer-owned publishers providing consumers e-books at lower prices than the agency publishers and taking significant market share from them in the process.” (Please see his letter for numerical analysis and graphs <http://aardvarknow.us/2012/05/09/letter-to-the-department-of-justice/>)

As for the \$9.99 price that the Plaintiff alleges is an “entrenched consumer expectation,” the industry newspaper Publishers Lunch has shown that to be false. In February 24, 2009, Publishers Lunch reported: “Using two different methods for checking Kindle price data in Amazon’s system, we find that roughly 30 percent of the 240,000 or so Kindle titles sell for more than \$9.99 (and well over 20 percent sell for more than \$20).” Calling \$9.99 an expectation is not only erroneous, as Amazon, too, sells e-books for much higher than \$9.99, but it also has us wondering why the Department of Justice isn’t concerned about Amazon arbitrarily fixing this price. As reported by *Forbes*, and researched by the firm IHS iSuppli, “[T]he bill of materials for the Kindle Fire is \$191.65; adding manufacturing costs, and the estimated total for the \$199 device is \$209.63.” Why must publishers be the parties to accommodate Amazon’s pricing strategy, one that would never be sustainable without the sale of other sundries, products completely unrelated to books?

No one is arguing that technology *hasn't*, as the Plaintiff says “brought revolutionary change to the business of publishing and selling

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books.” Yet that change can and should provide growth and healthy competition for multiple players, rather than coddle the sole online retailer with the financial means to sell e-books and devices for next to nothing. Labeling publishers as the bad guys here, when in fact they aim to make a fair profit for their writers while maintaining a fair price for their readers—the two groups of people on whom this industry is based—is both misdirected and inaccurate.

Once again we urge you to reject the proposed settlement and thank you for the opportunity to speak our opinion on the matter.

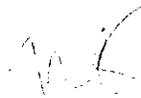
Sincerely,



Molly Friedrich



Lucy Carson



Molly Schulman



Nichole LeFebvre

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