



changing hands BOOKSTORE

June 16, 2012

Mr. John Read
Chief Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street, NW, Suite 4000
Washington, DC 20530

Re: Comments on the Proposed Consent Decree in *United States v. Apple, Inc., et al.*, 77 Fed. Reg. 24518 (April 24, 2012)

Dear Mr. Read:

I have owned and operated an independent bookstore in Tempe, Arizona since 1974. I have seen many changes in my industry and have weathered the ups and downs of the economy, the influx of dozens of big box chain stores entering my market, the detrimental impact that online giants B&N and Amazon.com have had on my business over the past 15 years and the advent of e-readers and the challenge of selling e-books to my customers. I am committed to staying in business but the DoJ ruling makes that extremely difficult for stores like mine. As a past president of the American Booksellers Association, I know intimately hundreds of small to large independent booksellers across this country and we are all concerned with the ongoing attempts by Amazon to totally monopolize every aspect of bookselling and publishing.

With respect to the selling of e-books, the Agency Model was working. It leveled the playing field for everyone—large stores, chain stores, small stores, and Amazon. As e-books become a larger segment of our business it is crucial that we have a viable opportunity to sell them to the public. The Agency Model is designed to give publishers a fair price at which to sell their carefully edited and produced books and eliminates the ability of Amazon to sell below their cost, using books as loss leaders. Enticing consumers to a website with artificially low prices for books in order to sell other consumer products like TVs and cameras is not good for the publishing industry and will in fact lead to the elimination of many publishers and booksellers as well as a decrease in the broad array of books available to the American public. Books and ideas are crucial to our democracy and have always been protected and encouraged.

While the major publishers in the United States were using the Agency Model, bookstores like mine were able to sell e-books to our customers and the number of those sales has been increasing exponentially each month. E-books are a way of life for many readers and we are happy to sell them books in whatever format they choose. We want them to have the option of buying their books where they please, uninfluenced by the artificially low prices offered on Amazon. To encourage them to buy from their local independent bookstore, we have invested tremendous effort and resources into selling e-books. We have used payroll dollars to train our staff to support our customers as they purchase, download and read e-books. We have in our aisles “shelf-talkers” with “e-book available” notations on them so that if the consumer sees a book she likes but wants it in an e-book format, she will know that it can be downloaded. We promote Google and publisher e-book specials on our website. We do this despite the fact that we make more money on physical books, knowing that e-books sales have to be part of our future economic model. We were seeing this jigsaw puzzle starting to coalesce when the DoJ ruling was handed down. Now it’s starting to break into pieces once again.

A two-year moratorium on the use of the Agency Model would be a disaster for our publisher vendors and us. We will lose our customers when they once again see artificially low prices on the Amazon website. If the consent decree requirement banning Agency Model pricing for two years is finalized, Amazon will regain its monopoly share in the sale of e-books and the entire e-book distribution system constructed since the Agency Model went into effect will be dismantled. All our hard work, all our payroll dollars, and our work toward a level playing field will be for naught. And Amazon will go back to its bullying tactics used with publishers prior to the Agency Model—dictating terms of sale and eliminating or threatening elimination of publishers listings from Amazon's website if they refuse to comply. This attempt to get the U. S. Justice department to rule in their favor is just one more nasty trick pulled from Amazon's bottomless bag of intimidation. And by this ruling the DoJ will have ruled against all the bricks and mortar stores in the country who are attempting to stay in business and play ball on a level playing field.

Amazon has been given many free rides in our country. In Arizona they have four warehouses out of which they sell books and other products to Arizona residents. They use our roads, our fire departments, our infrastructure but they collect no sales taxes to help defray these costs. They encourage their customers to go into bricks and mortar stores—stores that collect and remit sales taxes, hire local workers, pay utility bills, support their community—and look at products they might be interested in and then buy them 'cheaper' on Amazon. If there are no more locally owned businesses, having been run out of the market by rulings like this one by the DoJ, where will those same consumers be able to look at books or other products? Knowing that consumers want to look and touch before they buy, doesn't it make sense that our publishing partners would want our indie stores to remain in business and wouldn't they independently and individually come up with a way to promote an agency model that would guarantee this ability to play fair on all sales fronts?

The DoJ thinks that with its ruling that it is protecting the consumer from price fixing but the opposite is true. The ruling will take the ability to regulate prices from those who create the products, in this case e-books, and give it to those who would artificially deflate the prices to below the cost of producing and marketing the product in order to gain market share. This is unfair and detrimental to a free enterprise system and ultimately will result in higher, not lower prices once the competition has been eliminated. We have seen this happen in many industries over the years and it will happen in my industry as well. It is my hope that you will read and respond to this letter and others like mine and reconsider your position on this matter.

Sincerely,

Gayle Shanks, President
Changing Hands Bookstore, Inc.