

From: Rowena Cherry [mailto:rowenabe@REDACTED]
Sent: Saturday, June 16, 2012 12:02 PM
To: Read, John
Subject: Author's comment on the DOJ Complaint and Settlement

Rowena Cherry,
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May 25th 2012

John Read
Chief Litigation III Section
Antitrust Division
US Department of Justice
450 5th Street, NW
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Dear Mr. Read,

I write to offer a comment on the complaint and terms of possible settlement of litigation against various publishers and Apple.

As a recently-independent author (formerly traditionally published), my grave concern is that the DOJ's case may have the unintended consequence of undermining all authors' copyrights in two ways.

1. Copyright owners (authors) have the exclusive right to set the price for which they will sell their work.
2. Copyright owners (authors) have the right to not use or exploit their copyright, for some or all of the term of the copyright.

It appears to me that there is an ongoing erosion both of those rights for copyright owners (authors) and also "an entrenched customer expectation" that authors should not be entitled to those rights. In my view, the DOJ case may result in conflicts with copyright law regarding e-books.

VII 104 Part d. of the Settlement appears to grant Amazon the right to duplicate, *publish* and distribute electronic books at will, on Amazon's terms.

I perceive that may be tantamount to a partial confiscation of copyrights that belong to the authors (albeit licensed to the publishers) and granting them to Amazon. The authors are not accused of any wrong doing.

Although the agreement is intended to be limited to two years, it may in practice be a perpetual arrangement for authors whose e-books are sold by Amazon in this time-frame, because, in contrast with the one-time sale of a paper book via Amazon, once an e-book is sold by Amazon, Amazon permanently retains a copy to redistribute to the purchaser if the purchaser loses the original....and Amazon also creates extra copies for "Lending".

I would respectfully ask the DOJ to bear in mind various conditions allegedly imposed by Amazon, such as Amazon's alleged "account sharing" and "Lending" which effectively means that –allegedly-- in a few cases, one e-book is recorded as sold/paid-for and up to ten copies of that e-book allegedly could be "shared" simultaneously by and through Amazon without the knowledge of, or further compensation to the copyright owner.

"Sharing" up to ten e-books (that Amazon does not own) for the sale price of one via Amazon is not what I call in keeping with a copyright owner's right to control the sale and pricing of her own work, unless the authors are consulted, and agree.

VII 104 Part d. appears to put no restraint on this uncompetitive alleged practice. Please consider what protections are envisaged for authors under the terms of this complaint/settlement, if Amazon were to use authors' intellectual property as loss leaders to promote Kindle sales and paid "Prime" memberships.

The DOJ should not be able to mandate that copyright owners assign publishing and other rights to Amazon without negotiation and consent.

Allegedly, pressure has also been applied to publishers to release ebooks at the same time as the most expensive paper copies. The wording of the Complaint/Settlement **VII 104 Part b.** appears to hamper copyright owners' choice as to when to release e-books.

If a legal precedent were set, e-retailers could set book and e-book release dates, this might erode a copyright owner's right not to release an e-book version of a paper book at the time of their own choosing.

Assuming that Settlements take place with the publishers who have voluntarily settled despite their alleged innocence of alleged wrong doing, I believe that any "windfall" restitution paid to e-book purchasers would set another unfortunate precedent.

Presumably, customers made the e-book purchases willingly and voluntarily. Customers were not deceived. They were not obliged to purchase e-books at the advertised price if that price was more than they were prepared to pay.

Restitution would send an unhelpful message to the public and to authors about a copyright owner's right to set prices.

I am extremely concerned by the implication that the DOJ should dictate Amazon's arbitrary and unsustainable price range of e-books to authors and publishers regardless of fixed costs that publishers and authors have to cover through legal sales, and regardless of the length or the book, or of the amount of time and effort that went into the content.

Since I wrote and mailed the original, I have heard more and more from colleagues that Amazon

1) accepts returns of e-books, and voids the proceeds of the sale to the authors. No other digital item is returnable except for a replacement if the item is defective.

2) pays the agreed percentage (70%) to authors, but that 70% is of whatever price Amazon chooses to set for the e-book, which could be \$0:00. With physical books, the bookstore may buy a book from a publisher at a 50% discount, but must pay the publisher the full discounted amount, so will never discount a paper book more than 50% to the public, and the publisher will never take a cut to subsidize a promotion initiated by the bookseller.

Thank you for your time.

Yours sincerely,

Rowena Cherry.

Rowena Cherry

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