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LITIGATION III, ANTITRUST DIV.  
U.S. DEPT. OF JUSTICE

April 24, 2012

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

Dear Mr. Read:

Mike Shatzkin, a publishing consultant, has been urging people on his blog to write you regarding the settlement with the publishers in the DOJ anti-trust case, the letters having something to do with an amendment to the Tunney Act. Shatzkin states in his blog, "it is one where Amazon and the cost-conscious ebook consumer win, but everybody else (and that means authors, publishers, retailers, and the public that wants good books, as I explained on NPR) lose." So I'm writing my own letter because *Mike is wrong*. Yes, consumers win (good), Amazon might win (not relevant), publishers lose (up to them, if they don't change their business model, perhaps), retailers lose (Amazon is not a retailer?), public that wants good books lose? (nonsense, there are lots of new small presses publishing great stuff.)

My wife is an author, I'm a retired college librarian, and both of us are inveterate readers. (I read and reviewed 135 books last year and spent close to \$2500 on books – 95% of them ebooks.)

Regretfully, the large publishers as well as the mainstream print industry, which includes the New York Times and Wall Street Journal (my favorite newspapers) have a myopic view of the future and have an interest in preserving a distribution model that is no longer viable nor terribly efficient in a digital world. And let me be clear: this is a battle for control of distribution and an attempt to maintain a non-viable business model that sees close to 50% of books pulped as returns. Before it went bankrupt, Borders survived on credits they got by pulping books they had purchased, using those credits to buy more books. That's insane. And not sustainable.

Clearly, the so-called Big Six and Apple colluded to fix prices at a level they felt would return more money to them in the long run *even though under the agency model* they stood to lose revenue for both themselves and their authors. Before the agency model was forced on Amazon, publishers would sell ebooks to Amazon at whatever wholesale price they determined and Amazon was free to sell at a discount even if it took a loss using best sellers (it's a myth they were selling all their books for \$9.99) to promote the use of Kindle. (As an aside, the publishers insistence on DRM helped Amazon tremendously by forcing consumers to adopt one particular ereader rather than allowing the consumer to purchase a book in a standard format and then put it on whatever ereader s/he wanted. So the publishers inadvertently reduced competition in the ereader market.) Under the wholesale model, for example, publisher X would sell title Y to Amazon for \$14.99 who would then sell it for \$9.99 to the consumer. In this scenario the publisher gets \$14.99, the author (assuming a 20% royalty) gets \$2.99 and Amazon gets \$9.99 but that's OK for them because they sell more Kindles. Under the agency  $70/30$  model the book sells for \$14.99, the publisher keeps \$10.49, and the author gets 20% of that or \$2.09 and Amazon gets about \$4.50. Makes no sense from the publisher's standpoint unless they are trying to reduce the number of ebooks sold.

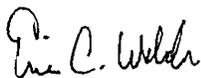
What publishers fear most is what is already happening. Authors can cut out the middleman and sell directly to the reader. They can publish themselves and make more money doing so; they keep the 70%. The IPG withdrawal of its books from Amazon is a desperate move to try to maintain its role as distributor in the ebook market, a market where no distributor is needed at all. There are many testimonials on the web of authors who could not get published through the traditional pipeline (see Lawrence Block's experience cited below— and he's a famous author) but are now making a good living by publishing themselves directly through Amazon, B&N and/or Smashwords to mention only three. The idea that Amazon could become a monopoly is crazy because it's so easy for anyone to jump into the market and compete with them.

The issue of quality is a non-starter. To suggest that only the Big Six are arbiters of quality is belied by much of what they have published. Editors no longer copy-edit, it takes forever for a book to reach the consumer, and a printed book remains in print but a brief time. The ebook world has addressed all of those concerns; an ebook never goes out of print, has the potential to return more money to the author, can be less expensive for the consumer, provides a far richer selection of content, and produces quality material (and some schlock but that's in the nature of a vigorous publishing world.) The print publishers have the opportunity to provide a competing platform for ebooks. They have not done so. Why should the consumer be punished for their myopia?

The great irony in all of this is that the DOJ anti-trust suit may force the publishers to recognize the world has changed and to finally move in a direction they will help them shed non-viable ways of doing business. Whether they have the foresight to do that remains to be seen.

I have purchased many more books for myself since the advent of the Kindle and ebooks. It was the lower prices and ease of use that allowed me to do so. I would argue that benefits authors and readers who are the only players in the game who should count.

Sincerely yours,



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References:

Mike Shatkin's blog: [http://www.idealogy.com/blog/things-learned-and-thoughts-provoked-by-london-book-fair-2012?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=things-learned-and-thoughts-provoked-by-london-book-fair-2012](http://www.idealogy.com/blog/things-learned-and-thoughts-provoked-by-london-book-fair-2012?utm_source=rss&utm_medium=rss&utm_campaign=things-learned-and-thoughts-provoked-by-london-book-fair-2012)

Kristine Rusch's blog: <http://kriswrites.com/2012/04/18/the-business-rusch-the-changing-definition-of-publishing/>

Kevin McLaughlin's blog: <http://kevinomclaughlin.com/>

Lawrence Block's blog: <http://lawrenceblock.wordpress.com/2012/04/22/all-changed-changed-utterly/>

*Pertinent quote: My agent told me about a new client he'd just signed, a romance writer. She'd published several books with a commercial publisher, and then they dropped her. So she started publishing herself in eBooks, and in a little over a year she was making eight or ten times what she'd been earning in the past. She'd tried handling her own foreign rights, but it took too much time and she didn't really know what she was doing, so she needed someone to represent her overseas, and negotiate other sub rights.*

*Now that she was doing so well, she said, publishers had come around, telling her how much they could do for her. "I tell them I already know what they can do for me," she said. "They already did it."*

<http://superversive.livejournal.com/111526.html> His blog post "Extruded Books: a cautionary tale" is a humorous but deadly serious examination of how and why the publishing industry went off the rails.

Passive Voice is a contracts lawyer interested in publishing who provides links and comments to a variety of resources. [http://www.thepassivevoice.com/04/2012/the-gang-that-couldnt-shoot-straight-apple-and-5-big-publishers/?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+ThePassiveVoice+%28The+Passive+Voice%29](http://www.thepassivevoice.com/04/2012/the-gang-that-couldnt-shoot-straight-apple-and-5-big-publishers/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+ThePassiveVoice+%28The+Passive+Voice%29)