

Andrew Gross

May 15, 2012

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

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

Dear Sir:

As a New York Times bestselling thriller author, and a former president of several publicly-traded companies in the sports apparel business (HEAD, Le Coq Sportif, Sun Ice) I would like to express my views on what I believe to be the wrongly-determined judgment of the DoJ in the Amazon-Apple price fixing case.

Obviously, not being privy to the full investigation, I cannot say for sure whether discussions that were deemed to be "collusive" between Apple and the publishers actually took place. But if there was ever a legal disposition that should have fallen under the heading of "*No harm, no foul!*" this was surely it.

Clearly, the specific pricing model that led to the alleged collusion, (Amazon's \$9.99 pricing of new commercial bestsellers), relates to only a tiny sliver of the digital book business. I think it has been shown that the overall price of e-books has actually fallen during the period of the so-called "collusive" Agency pricing model. Under that model, booksellers—including Amazon, it should be noted!--made more money, while publishers sacrificed margins in order to create a more competitive retail landscape. Most importantly, e-book sales expanded rapidly as well, as well as sales of digital reading machines. In my view, author's made more money as well, not as a result of per book royalties (which it is worth mentioning under the Agency model actually declined, so it is hardly in my short term interest to defend this!) But in the rising tide of an orderly, expanding business, everyone gained!

If consumers were somehow "harmful" in this model, it was only marginally, \$3.00 per book on some new titles. Surely not as materially as the overwhelming majority of readers who still prefer to read printed books, as even under the "agency model," bestseller e-book pricing is still far less than one can buy a book from anywhere else. But during this "agency" period, some measure of order was restored. Amazon's aggressive pricing on new bestsellers was always intended to create havoc in the industry-- both to publishers and to their competitors. The \$9.99 bestseller price was never a price point established by downward competitive pressures; it was merely a "marketing discount" purely for Amazon's own gain. Tell me any industry, from lawn chairs to financial

institutions, even the sports apparel business where if the largest player began to price their lead product *30% below its own cost*—not the MSRP, but it's actual *cost!*-- losing money for the sake of selling related products-- it would not turn that industry completely upside down. And likely, in a larger, more essential industry, engendered counter suits to the DoJ to get them to desist!

When I was at the Columbia Business School we looked at many scenarios in which creating the lowest price to the consumer did not, in fact, work to the consumer's best interest. That model is backed up by many real-life scenarios playing out today. Absolute lowest price generally creates lower margins. Lower margins to business closings as competitors need to follow suit. More closings to a lack of choice and service. I live in Westchester County outside New York, and I can't tell you, other than an Apple store, where to even buy a computer today! Not to mention the retail music business. If the government believes the future is brighter with the price of content edging towards zero; with publishers pushed to the brink; with retail bookseller doors constantly closing; independent book stores closing up, and all so a small band of "aggrieved" book buyers can pay \$3.00 less than the already tolerated price of \$12.99 for commercial bestsellers, they are myopic.

Now, there is only one winner. And it's not the consumer. Scott Turow is right when he opines that it's a judgment in the name of increased competition that will only engender the opposite effect.

I hope you will take this into account as you prepare your judgment. Thank you for your time and thought to this crucial issue for all writers and book marketers.

Sincerely,

A handwritten signature in black ink, appearing to be 'Andrew Gross', with a long horizontal line extending to the right.

Andrew Gross

NYT bestselling author of *The Blue Zone*, *The Dark Tide*, *Don't Look Twice*, *Reckless*, and *Eyes Wide Open*.