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U.S. Department of Justice
450 5th Street NW, Suite 4000
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LITIGATION III, ANTITRUST DIV.
U.S. DEPT. OF JUSTICE

Dear Mr. Read:

I am writing to protest, in the strongest terms, the Department of Justice's antitrust action against five of the major American trade publishers and Apple Inc. over e-book pricing. I am a recipient of the Pulitzer Prize for Biography, the National Book Award for Nonfiction, and a Guggenheim fellowship. I am also a member of the Authors Guild board of directors. Most important, I earn my living by writing books.

I protest not because of any immediate harm that would be inflicted on my income by this action. My publisher is a division of Random House, which has not been named in this action. But I am gravely concerned that my ability to continue to produce new works of literary and scholarly merit—an ability depends upon profits derived from their sale—will be seriously harmed, if not destroyed, by this action.

1) The Department of Justice is acting to protect predatory pricing. When Amazon sold selected e-books at the \$9.99 price prior to the implementation of the agency model of e-book pricing, it took a loss on many titles. Certainly it lost money on my most recent work, *The First Tycoon*. My presumption is that a major reason was, first, to solidify its monopoly position in the digital book market. A second major reason, I presume, is that it was attempting to shape consumer expectations about book prices in this emerging and rapidly changing market, in order to aid its efforts to force publishers to give Amazon advantageous terms which would allow it to eventually make a profit at \$9.99, under terms other retailers would not receive.

This latter presumption is based in part on my experience with my own previously named book. Amazon allowed customers to write negative reviews on its website of my book because Amazon priced the book above \$9.99, reviews that placed the blame on publishers and authors. I complained to Amazon that these reviews violated Amazon's own stated policy, that customer reviews must be about the content, not prices. Amazon refused to take the negative and misleading reviews down, whereas it had previously acted on my complaints to take down inappropriate reviews that violated its policies. The clear conclusion is that it wished to foster consumer misperceptions of the value and pricing of e-books.

2) The Department of Justice is facilitating Amazon's strategy of using predatory e-book pricing to establish a monopoly position in online retailing in general. In the Antitrust Division's action against Microsoft over its assault on an innovative

competitor (Netscape) through predatory pricing of its Internet browser, the Department of Justice argued effectively that Microsoft was manipulating the market by bundling its browser into its larger operating system and software package. In essence, the Department of Justice recognized that predation in the Internet browser market was integrated into the larger software market. In this e-book case, however, the Department of Justice is ignoring the fact that the \$9.99 e-book price it is defending was established by Amazon to attract customers and to accumulate consumer data in order to sell more lucrative products than books. Publishers do not sell e-book reading devices, flat-screen televisions, or any of the thousands of far more expensive, and profitable, products that Amazon sells to the same customers who first come to its website in order to buy e-books. By treating the e-book market as if it operates in isolation from this larger market, the Department of Justice is underestimating the predatory extent of Amazon's \$9.99 e-book pricing scheme.

3) The Department of Justice is treating books as if they were a commodity, when in fact each book is a unique product, requiring a unique price. This is a fundamental fact of the book market, digital or otherwise. It is why physical books are not priced by the page count; their value, and their cost of production, is not in the amount of paper required to print them. To treat Amazon's \$9.99 predatory price, a one-size-fits-all commodity price, as the basis against which other prices and pricing schemes must be judged, is to gravely misunderstand the nature of the product. Each book is unique. Different titles are not mass-produced together. Their prices cannot, and should not, all be the same.

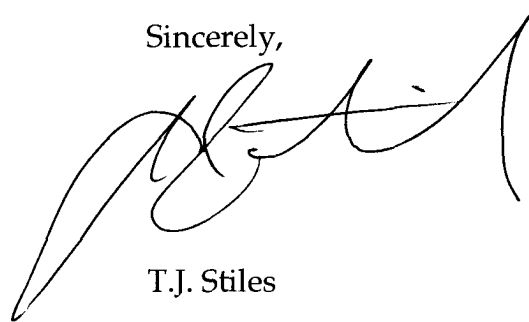
Some books may be written and edited and produced quickly and cheaply. I know authors who write short books that require little research and review, and that follow a consistent pattern. These authors may produce a new book in less than a year, year after year. I, on the other hand, spend years researching and writing each biography. I spent nearly seven on my Pulitzer Prize-winning *The First Tycoon*. This intensive research and literary effort was accompanied by numerous illustrations, which I had to find, and then pay for the reproduction rights. Maps and an index had to be produced. The editing and copy-editing was extensive, repetitive, and painstaking. To claim that a series potboiler thriller and a biography such as my most recent effort are the same commodity, that the prices should be the same, is on the face of it laughable. My book must be priced at a higher level to allow for a reasonable return on the effort made by me and my publisher to produce it. Yet the Department of Justice is telling me, in essence, that my publisher is not free to enter into a pricing scheme of its own choosing, in order to guarantee a reasonable return on the investment of time and money in producing my book.

4) Reasonable monopoly concerns must incorporate more than Amazon's \$9.99 predatory e-book price. Amazon has made no secret of its desire to annihilate competitors, including brick-and-mortar retailers. Last Christmas it openly called upon consumers to use their smart phones to visit bookstores and other retailers, and order anything they saw from Amazon instead of the retailer. The agency book pricing model is far from perfect—it does not currently allow for enough differentiation in pricing, for example—but it does level the playing field, to allow independent booksellers to innovate in ways that go beyond pricing alone. I take my children to them. I discover new writers in them. I hear writers speak in them. They are key to maintaining a

healthy, diverse, and innovative book market. Yet the Department of Justice, if successful, will be assisting in their destruction at the hands of an online monopolist that ultimately cares nothing for books, authors, or readers. It is shameful.

Please consider these factors, and reconsider your antitrust action.

Sincerely,

A handwritten signature in black ink, appearing to read 'T.J. Stiles'. The signature is fluid and cursive, with a long, sweeping underline that extends to the left and then curves back up to the right.

T.J. Stiles