

From: barbaragpete[REDACTED] [mailto:barbaragpete[REDACTED]] **On Behalf Of** Barbara Peters
Sent: Tuesday, June 12, 2012 12:17 PM
To: Read, John
Subject: The DOJ suit/E-book pricing

Dear Mr Read

I write to you from a dual perspective as

1. The owner of a highly successful independent bookstore, 22 years and going: The Poisoned Pen, Scottsdale, Arizona.
2. Co-owner and editor-in-chief of a small but significant and much esteemed publishing company, Poisoned Pen Press.

I like to think that I look at issues in the publishing industry from both sides and I am lucky to work for fun and not profit. Plus being a lawyer before taking up books as a "profession" means I still spend a lot of time with lawyers discussing and analyzing issues in an industry which is essential to the fabric of our American republic.

Here is what I think: the DOJ is way off the mark. To go after a perceived monopoly which characterization of the agency model I reject to what can only increase the dangers of an actual monopoly, amazon.com, argues either a flawed understanding of the publishing industry or a political alignment that undermines the respect and trust accorded DOJ. The best interpretation I can put on DOJ's action is a "fire from the hip" label from which, one hopes, DOJ can reconsider and retreat. If not, everyone except amazon loses.

The book industry is odd in that for retailers, the product comes prepriced: whether print, digital, audio, etc in format. Thus competition in the pricing field necessarily forces a downward spiral, to the detriment of everyone (one has only to look at the disaster that has been UK publishing since the UK broke its net book agreement) including the public. What we see in the discount spiral down we've been in, now accelerated by e-books, is fewer and more centralized retailers, accelerated branding/franchising meaning fewer choices for readers,

and serious concerns whether the industry can support authors (who create the content), publishers (without us, it's all garbage, like a giant blogosphere: I see today a more urgent need than ever for editorial and other benefits of publishing as opposed to self publishing), and a healthy diversity of markets. To set a price line as each publisher sees it to support its services for ebooks is no different than deciding on pricing, what the market will bear, for print books; Baldacci at \$28.95 vs. unknown new author X at \$19.95. In fact discounting has forced an upward spiral for more successful authors since the discounting retailers only go after the brand name authors (Costco might have 20 authors in stock at any given moment out of millions of titles in print), buy in bulk, sell at a loss in a loss-leader business model). To force out the agency model and allow amazon and the kindle to enhance this spiral in digital will result only in amazon achieving a monopoly that inevitably DOJ will have to face down the road.

To characterize publishers supporting an agency model as targets for a lawsuit is to misunderstand their individual, not collusive, imperative to remain viable concerns. This against an octopus which has repeatedly demonstrated (not unlike say Costco) its willingness to lose money in order to gain market share with the end game being to drive out competition. Honestly, this is like Rockefeller/Standard Oil revisited.

I often ask myself why is it that men (sorry, this is not a feminist statement but I think a defensible one) are absolutely driven towards the imperial, the Napoleonic? Whether JD Rockefeller, Sr., Bill Gates, Jeff Bezos, the Google guys, the dynamic is always to drive the business model as far as we allow it to go, to world domination. Americans seem to root for the guy/model on the way up and then at some point our inherent distrust of monopolies kicks in and we turn on them. Look at the history of Microsoft.

We can see this coming as easily in Zuckerberg and Facebook which will at some point

hit the wall or find some new competitor. Google has already presented a variety of challenges.

It's interesting that these leaders/companies inevitably turn to philanthropy as some sort of what.... I am a Stanford grad so know all about Leland; we see it in the Rockefellers, the Gates foundation etc. doubtless the Zuckerbergs will go after some splashy cause soon, it's all about Face which is not a Chinese monopoly.

DOJ should be our first line of defense, that of diverse business models, against the monopolistic, not an instrument of aiding a truly dangerous business (and social) entity. To imagine that publishers in NYC actually engaged in some kind of collusion (if you knew them as I do you'd know it's a laughable concept on many levels: they can hardly achieve consensus, communication, and efficient strategies within their own corporate structures, let alone band together to create one outside each's purview-- and that's leaving aside they are in my experience really decent people not interested in total market share but a fair market share)

As a small publisher we have embraced digital which serves many good purposes. And we have a pricing strategy we've set that allows a fair return to authors and to the company while appealing to readers. The power of the free can be harnessed for an individual author or book promotion within this framework to great effect. But long terms goals which means maintaining acquisition sense, editorial excellence, production values, a marketing program, and the corporation expenses demands a version of the agency model for an e-book program. My own feeling is that ebooks will settle in to some percentage below 50% of reading platform share.

One has only to look at the rising mess that is Walmart and the whole banking industry disaster to see that allowing too much (unregulated, and big always means a large degree of unregulated) concentration in too few hands is destructive to society as a whole as well as cheating consumers even if said consumers

as they are dumbed down and disserved may not even recognize the process. DOJ stepping into the publishing arena with this action to me signals a lack of understanding of the large issues in play.

I do urge DOJ to reconsider. The only good news I see is that DOJ has unintentionally launched a forum which may, if more careful analysis wins out, benefit rather than impede an industry fundamental to representative government which demands an educated and informed citizenry with access to a wide rather than narrowing range of information and materials whether printed or digital. It's not the format that's crucial: it's content.

Barbara Peters, The Poisoned Pen Bookstore/Poisoned Pen Press