

Read, John

From: Monica [monicaburnsauth[REDACTED]]
Sent: Saturday, June 09, 2012 1:28 PM
To: Read, John
Subject: A Little Known Traditionally Published Author's Unorthodox Viewpoint of the United States v. Apple, Inc., et al., 12-cv-2826 (DLC) (SDNY). Comments on Proposed Final Judgment as to Defendants Hachette, HarperCollins and Simon & Schuster.

Dear Judge Cote,

I am writing to you regarding the DOJ's proposed settlement with traditional publishers. First, a bit about my background. I am what is referred to as a mid-list author, perhaps even lower than mid-list. A mid-list author is someone who's name is fairly recognizable to a small, confined set of readers and is traditionally published. I started my career in ePublishing with a small press publisher. I transitioned to Penguin/Berkley from my second ePublisher, and now I'm self-publishing my backlist. I believe in keeping my feet in every basket possible in an effort to build my readership.

I disclose that I, with a group of colleagues, write a column on the topic of self-pub books for Barnes & Noble Review. I do this not as a service to Barnes and Noble, but as a marketing strategy to raise my personal brand awareness among readers and thus my personal revenues. Was it a marketing strategy on the part of Barnes and Noble to help raise the awareness of PubIt and drive business to their self-publishing website? Yes. Does this mean we were in collusion when we negotiated this deal behind the scenes without telling Amazon as to what we were doing? No.

Do I believe the goal of Apple and publishers was to limit Amazon's impact on the industry? Yes, I would do the same in their shoes, because limiting the reach of Amazon means survival for the "Big Six," Lighting Source, Barnes and Noble, Books-A-Million and many other business who will be impacted by any decision you render. This lawsuit also will impact readers and authors for years to come. I hope you will review the DOJ's case with an eye toward whether the "Big Six" set out to damage Amazon or if they were putting mechanisms into place that would ensure their survival and the survival of businesses they work with to produce and distribute their product.

I believe the "Big Six" are focused surviving, and they made decisions based on that fact. If the "Big Six" in their partnerships with Apple damaged Amazon in the process, that is part of business. Businesses have the right to do business with whom they choose. Businesses have the right to counteract business practices that give their competitor unfair advantage or when that competitor forces a business into a model that is beneficial to the competitor. The only time business is supposed to be fair is when a business is the sole source of any product and stifles creativity and innovation (I shall abstain from expanding on my loathing of Microsoft and its stranglehold on the computer software industry)

As a businesswoman, I know one needs to use good common sense in managing one's business. I imagine it's quite likely that I'll be in the minority of authors who will take the stance I'm taking. I do this because I believe there are certain issues other authors are blind too.

- 1) Fact – The buying public has historically refused to buy the "out of the box" books. As an author of unusual "out of the box" books, I know this first-hand. I have yet to sell-through (pay back my advance) on five different books that I contracted with Penguin/Berkley. The publisher took a risk on me and they lost money. Authors that do not make money for a publisher don't get renewed contracts. As a businesswoman, I understand this point of view. I don't like to lose money (as I do with piracy, something the DOJ has done little to stop), and neither do publishers.

As publishers need to make money to survive, the same old books get published because that's what the market demands. Supply and demand coexist to the benefit of the business that provides the specific demands. Even I,

who hated Economics 101, understand this principal. I question whether or not the DOJ understands the simplicity of economics or if the laws have been written without a simple understanding of economics.

- 2) Fact - As a general rule, authors are not business people. Too many authors do not understand their contracts, they rely on their agent to make the best business decision for them, and they are too willing to sign a contract simply out of desperation to be published because they know there will always be someone behind them who *will* sign a "bad" contract.

This is another fact I understand. Traditional publishing has been my goal since I first started writing for publication. But, I also know a bad deal when I see one. In the summer of 2008, I was offered a revision letter by Harlequin. In the industry, a revision letter from Harlequin is viewed as a precursor to an offer. They want to know if you're willing to fit into the "cookie cutter" mold. This was my first real bite from a traditional publisher, but I knew such a deal would stifle my creativity.

Authors know and understand that Harlequin has a specific business model, and their model was not to my liking. To the horrified dismay of my agent, I turned down the revision letter offer when they stated their offer would only be for their category line, not the larger, greater exposure, higher paying single title line. Three months later, Berkley took a risk on my "out of the box" books. Their risk, unfortunately, to their and my dismay, did not pay off. Did I make a mistake? Maybe, but it's my business, and I run it as I see fit. I do not like being shoved into a corner by a big corporation.

- 3) Fact – Not all authors have works that are worthy of publication. By worthy, I am referring to the ability to tell a story that holds the reader's attention. While this is subjective of course, and editors sometimes miss the mark in huge ways (Harry Potter), they are paid to recognize the most probable books that will be a success. Even books "worthy" of publication are not necessarily viewed by the reading public as worthy of reading.
- 4) Fact – Few publishers either know how, choose to, or can afford to grow an author. Some are also at the mercy of their financial divisions who are answerable to stock holders, the majority of whom generally do not understand the publishing business.
- 5) Fact – Predatory pricing kills the competitor.

From my viewpoint, I do not believe collusion existed between Apple or the "Big Six." Authors objected to the agency-model pricing and proclaimed it was collusion because it reduces their royalties, thus raising the DOJ's awareness of the issue. While I am not happy with any reduction of royalties, I am a businesswoman, and I understand what will happen if the "Big Six" are forced to give up the agency-pricing model.

- 1) Fact – a smaller business with less capital cannot compete well with a larger business that has enormous financial staying power. Even combined, the "Big Six" do not have the big pockets Amazon has. Amazon can afford to wait out its competition to the bitter end.
- 2) Fact – If allowed to continue, Amazon's predatory pricing, which the agency-model was designed to counter, will eventually put the major bricks and mortar bookstores out of business or reduce them to such a small size that consumers will be forced to visit the primary source of books. This also dramatically impacts the "Big Six" and their venues for distributing their product.
- 3) Fact – The simple definition of collusion means to engage in secret or illegal cooperation or conspiracy with another, particularly when the goal is to cheat or deceive others.

This simple definition seems liberally applied by the DOJ when it comes to the Apple lawsuit. Is it collusion when a group of businesses band together in their effort to survive and exclude the biggest business from a deal? If I had been one of the CEOs of these publishers, I would not have hesitated to create the agency-model pricing

structure. Survival is imperative in the face of Amazon's domination in the publishing world. Let it be noted that Amazon is even challenging other merchandise retailers, such as Target, Walmart, etc., in its efforts to control market share.

- a. Fact – a business has the right to choose who they do business with.
- b. Fact – If a business engages in predatory pricing structures (Amazon) then a competing business has the right to counter predatory pricing strategy with a model that favors their survival (the “Big Six”), even at the expense of manufacturers earnings (authors) or consumer pricing (readers). It is how business functions.
- c. Fact – If a business partners with others to the detriment of a larger business this is not applying unfair business practices. It is simple business strategy.
- d. Fact – Authors who oppose the agency-model pricing strategy of the “Big Six” are looking at the model from one view point only. They're looking at how the agency-model pricing means lower royalties. What they fail to realize is that if the “Big Six” are pushed out of business they will have *no* royalties other than what Amazon pays them. To believe Amazon will continue its generous royalty program once they are the primary, if not sole, publisher on the market displays a naiveté that is detrimental to everyone.
- e. Fact – Authors, as I've stated above, are generally poor business people. They see the big picture in terms of their earnings. They do not look down the road to what will happen when there is no competition in the publishing world. When Amazon has no more competition, authors will have fewer publishing options outside of self-publication. At that point Amazon will become the “Big One,” and it's attitude toward authors will in all likelihood be no different than the “Big Six.” Amazon is a business. For anyone to consider it author friendly is akin to having a wild animal as a pet and assuming it will never bite you.
- f. Fact – It is highly likely that Amazon's current royalty structure for self-publication will change drastically when there is no longer a reason to pay a 70% royalty on books. The result will be:
 - i. Authors will see their royalties reduced to whatever figure Amazon wants to pay, whether it's in the arena of self-publication or with Amazon's Montlake publishing division, as authors will have limited or no options left for publication.
 - ii. Authors who are already established will find it harder to expand readership because Amazon will no doubt, as any good business strategy suggests, eventually push the pricing of books upward again to increase their profits. This reduces consumer's ability to buy larger quantity of books due to budget constraints. Authors will find it difficult to find an audience unless they enlist Amazon's help at a cost as every business charges fees for services rendered.
 - iii. Consumers will be forced to pay the pricing Amazon sets as they will have little to no other retail options for a product.

A great many authors in self-pub who “worship” Amazon have never been traditionally publish, and therefore blame the major traditional publishers (labeled the “Big Six”) for being gatekeepers for readers. There are many who decry the “Big Six” for buying the “same old kind of books” for publication, which then means that works that are “out of the box or cookie cutter mold,” don't stand a chance of publication in the print market.

I think these authors root for the demise of the “Big Six” and protest the agency-model pricing to their own folly. I do not want the “Big Six” or Barnes and Noble to fail. This leaves me as an author and reader with limited options. It is sound business principle to put into place a pricing model that ensures survival. Partnering with another business to survive is not collusion, it's sound business principles.

I believe the best option for authors, distributor, booksellers, and consumers is when a business on the edge of a monopoly is not allowed to force other businesses to the brink of collapse. It's bad business practice, it's bad for consumers, bad for manufacturers and it's bad for the economy. I hope you will consider my arguments when rendering your decision.

Regards,

Kathi B. Scarce writing as Monica Burns

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