From: Michael Bourret [mailto:mbourr[REDACTED]
Sent: Thursday, June 21, 2012 9:49 AM
To: Read, John [John.Read@ATR.USDOJ.gov]
Subject: Comments on the Proposed Consent Decree in United States v. Apple, Inc., et al., 77 Fed Reg. 24518 (April 24, 2012)

Dear Mr. Read:

As both a consumer of e-books and a publishing professional, I am opposed to the settlement between the Justice Department and publishers regarding e-book pricing.

The introduction of the agency model drastically changed the e-book landscape for the better, increasing the number of competitors in the marketplace, and spurring all sorts of growth. By taking predatory pricing of e-books out of the picture, retailers were forced to compete on innovation, leading to reasonably-priced and feature-competitive reading devices and experiences. My e-book buying has increased dramatically since the introduction of the agency model. I felt safe making a purchase from any retailer, knowing the price of any one e-book would be the same, and I also felt safe investing in the *one* e-book ecosystem I preferred. Since I can't transfer books between competing readers, it was important to know that the platform I chose would remain price competitive.

With the proposed settlement, I won't feel comfortable buying a new e-reader; I can't make an investment in one platform when I don't know if they'll be able to compete--or if they'll survive. I am also concerned that the high level of competition and innovation on the part of retailers to develop better e-readers and store experiences will slow, given the need to compete instead on e-book price. As an e-book consumer, I've benefited from increased selection and innovation since the implementation of the agency model. I oppose the settlement because I'm concerned that it will limit selection and slow innovation.

As a publishing professional, an agent who advocates for authors, I find the settlement lacking. I have two major concerns about the proposed change to the agency model, in which retailers may discount single titles, but may not take a loss on a publisher's overall portfolio within a given year. My first concern is about how retailers and publishers can successfully manage something potentially so complicated; and what happens to a retailer that violates this formula? I'm also puzzled by the rationale behind this arrangement. It's clear from the lawsuit that agency pricing isn't a violation of any law, rather the issue is that the implicated publishers and Apple allegedly colluded to raise prices. I'm not sure how this modification is a remedy for collusion. It does not punish the settling parties, but instead, in my view, punishes authors, which is my second concern.

While the settlement aims to protect publishers from predatory, below-cost pricing by limiting the discounts across a publisher's list, it does nothing to protect the individual authors from such a practice. While the perceived value of e-books in general may not change much with this protection in place, an individual author's work may well be devalued. A retailer, for instance, could give one author's work away for free or at a very low price, thereby devaluing that particular author's work. This was, in fact, the practice that the agency model was developed to combat; retailers discounting only the most in-demand titles to gain market share. So though the settlement aims to curb the impact of discounts, it does not do so for individual rights holders.

The authors, whose products publishers publish and retailers sell, are the least represented by the lawsuit and settlement. Readers are best served by a market that fairly compensates authors for their work while keeping prices competitive. Because the terms of the settlement won't achieve this, I oppose it.

Sincerely,

Michael Bourret

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Michael Bourret
Vice President & Literary Agent
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