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May 8, 2012

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

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

Dear Mr. Read,

I write to you as the President of the AAR, the largest organization of literary and dramatic agents in the United States, and on behalf of the unanimous AAR Board of Directors. Our more than four hundred seventy-five members represent writers who number in the tens of thousands. We want you to know in the strongest terms possible that we firmly oppose the proposed settlement between the Justice Department and three publishers with respect to e-book pricing.

Readers, writers and the general public benefit when there is a healthy competitive literary marketplace. Two and a half years ago Amazon, with its proprietary Kindle devices and its willingness to discount e-book “bestsellers” to a level at which it sustained a significant loss on each copy sold, threatened the entire marketplace for books. Amazon’s practice of targeting the very titles that drive profitability of our entire industry and pricing them several dollars below cost was clearly leading to the demise of the independent bookstore, hastened the loss of Borders, and threatened the existence of Barnes & Noble, the one remaining large chain store that sells books. This was not healthy for competition or for authors or indeed for consumers in the long-term. The steep discounting from Amazon was not healthy competition—it was a practice of selling our clients’ work at a loss in order to make it impossible for other businesses to enter the e-book marketplace in a way that made financial sense for them. This artificially low pricing unfairly threatened the world of publishing and bookselling and would ultimately have a devastating effect on the choices available to book consumers.

When Apple launched the iPad and offered to sell books at the “agency model” terms it was already using for other media sales, our members breathed a sigh of relief. This would create a fair playing field for Barnes & Noble, Apple and others to develop devices and join the e-book marketplace. Consumers would be able to buy their books at various retailers or e-booksellers;

the threat of a monopoly was diminished. We cheered this development despite the fact that, as you no doubt know, under the agency model publishers were taking in less money per copy sold—and therefore we and our clients were getting less in royalties and commissions. But we believe this sacrifice was in the best interests of the book landscape and therefore our clients long-term.

The proposed settlement would allow for a resumption of predatory discounting of our clients' most important and profitable works—the new 'frontlist' and bestselling titles—and undermines the growth of a competitive marketplace for books. It seems to us outrageous that the Department of Justice would choose to interfere in a functioning marketplace where consumers can choose from a broad array of titles with huge differential in prices and formats—with a very unclear picture of whether or not 'agency pricing' did indeed raise e-book prices on anything but a select number of titles that had been targeted for underselling by Amazon. We do not want to return to an environment in which our clients' intellectual property is irrationally priced in order to stifle innovation and harm consumer choice.

Of course we have no way of knowing if there was collusion among the publishers and Apple. But this proposed settlement damages our clients and the industry in a way that goes beyond any appropriate remedy for any possible misconduct. We urge you to reject the proposed settlement and allow the market to return to one that protects the value of our clients' intellectual property from unfair and predatory discounting. This will protect and encourage broader competition among all booksellers, will allow the consumer the protection of a range of choices in format, price, and retailer, and will encourage digital innovation in the burgeoning field of e-book publishing and retailing.

Respectfully,



Gail Hochman,
President, AAR

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