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

May 11, 2012

Dear Mr. Read,

I am writing to you today concerning the DOJ civil suit against Apple and five publishers. I have been an independent bookseller for 32 years and have seen, and survived, massive changes in our industry over that period and hope to continue to do so. Even with all the consolidations in publishing, the clash of massive chain stores, the escalation of real estate prices, the impoverishment of much of the middle class, and the calamities inflicted on the economy by the financial markets, we have persevered, providing a wide range of books to readers who want and need them, at fair prices.

The advent of the internet and ebooks are, by themselves, no more of a challenge to the publishing industry and the bookselling business than these other circumstances have been. The unique threats arise not from changes of distribution, or format, but from the destruction of a fair and equitable playing field, coming from two fronts. First, is the outmoded yet uncorrected unfair advantage given to online retailers to not collect sales tax on behalf of citizens and their governments. Sometimes in outright flaunting of laws in place and sometimes working hard to maintain their unfair advantage, Amazon has consistently resisted efforts to make themselves accountable and responsible to communities they ostensibly serve. They use tax avoidance as a corporate strategy that gives them an unfair advantage in the marketplace, helping them to establish a near monopoly on ebooks and to distort the value and distribution of print books as well.

The second front, as is well established, is the strategy adopted by Amazon to use cultural products such as books as loss leaders to attract the reading demographics of higher educated, higher income populations by undercutting the prices of books below even their cost to Amazon, so as to then sell those same customers their profit-making products.

Monopolies are destructive of the public interest, as you well know. Through unethical, sometimes illegal, and sometimes possibly illegal practices, Amazon has leveraged its growing power into something extremely destructive of the very idea of a healthy cultural industry. The distortions of its power grab is well-known within the industry if, interestingly, not extensively covered in the media, until recently.

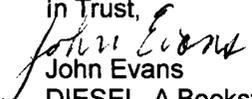
I bring all this up merely to show the extent to which those of us in the industry were so unprepared for a civil suit against five publishers who had done so much to creatively answer these distortions with healthy business practices which have only increased competition, reduced the prices overall for the consumer, and preserved the integrity of a cultural industry deeply threatened by the predatory practices of one conglomerate exhibiting little or no responsibility toward the industry it is disrupting. My belief is that the DOJ, not recognizing the extent, and intent, of Amazon to destroy an industry to increase its own power, has unintentionally decided to prosecute the wrong companies. A suit against Amazon for anti-competitive and predatory practices, regarding sales tax, monopoly, and undue influence, would make sense, but one against these publishers makes no sense to us at all.

To clarify, the decision by both the publishers named in the suit and other publishers who have since altered their policies to an agency model, was and is an intelligent, thoughtful, legal, and responsible answer to the damages outlined above. My understanding is that the agency model, used in many other industries, is a perfectly legal way of structuring business relationships. This is Apple's model as well. It is in the interest of the economy, the consumer, and the industry for there to be fair and healthy competition, online and off. As has been shown, the switch to agency model for these publishers has increased market competition (with Amazon's near-monopoly dominance dropping from an unhealthy 90% to a 60% share, in 3 years) as well as in consumer prices – exact industry figures have been made available to the DOJ, I believe, but somewhere in the order of a 10% reduction in overall pricing levels. All this because of the switch to the agency model.

So, the single most pro-competitive, consumer oriented, industry fostering change in the business, in the last twenty years, has suddenly received a civil suit from the DOJ. I hope that you can understand the confusion, anxiety, even anger, this is causing for those of us who have devotedly worked on behalf of the culture: from editors to booksellers, agents to publishers, readers to authors.

I understand that a possible settlement looms involving three of the publishers, all proclaiming their innocence of wrongdoing but unwilling to fight the good fight and suffer and endure the costs of protracted DOJ litigation. That they would buckle, however understandable, is lamentable. I hope it doesn't come to this.

My hope, like so many who care about this culture and this industry, is that the DOJ will come to understand the complexities of the industry they are attacking. That the suit will be dropped on its lack of merit, would be the best initial outcome. Investigations into Amazon's practices regarding tax avoidance, labor practices, and the destructive impact of using a single-focussed loss leader strategy of books and ebooks, would be an appropriate and honorable result of all this. At the very least, removing any obstacles to the exercise of the agency model by the three publishers considering settlement would be a vitally important decision helping to preserve the healthy correction currently underway. This will help to balance the massive distortions of the industry, protecting competition, the consumer, and the culture.

in Trust,

John Evans
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