

**From:** Rich Van Tassell [mailto:richva[REDACTED]]  
**Sent:** Saturday, June 23, 2012 7:35 PM  
**To:** Read, John [John.Read@ATR.USDOJ.gov]  
**Subject:** Comment from public on your ebook litigation

I am the owner of Bay Books, an independent bookstore located in San Ramon, California. We believe that books are special: they are a good part of the glue that holds society together. Our store is a subscriber to, and a beneficiary of, the “agency model” of ebook sales and pricing which your litigation has attacked.

First, your litigation is disingenuous because it accuses the named publishers of conspiracy, without alleging that there was anything illegal about what was accomplished by the so-called conspiracy. It seems reasonable to me that what you are really objecting to by filing suit against the publishers is price-fixing. Yet, each of the so-called conspirators is pricing his own unique offerings, and not the offerings of the others. Most books published today are under copyright protection, and therefore have only one publisher, and not multiple publishers. Since each has different products, what they are doing is setting the prices of their own products, and not the prices of the products of the others

The real price-fixer is Amazon, Inc., not named in your suit, and the corporation that will be the ultimate beneficiary of your suit if you continue with it, and ultimately succeed. This organization has set out to dominate the book business and to destroy it for all other participants, and is well on its way to doing so. It is Amazon that set the bar at 9.99 for ebooks, not the publishers that you attacked. With its first-mover status on electronic reader sales of its proprietary Kindle and of ebooks that can only be read on the Kindle, Amazon has an enormous de-facto monopoly.

The publishers correctly fear that monopoly, and so do all booksellers other than Amazon, and so do most authors. Why? Because if Amazon succeeds in dominating the book business, it will publish all the books itself. It will give authors whatever pittance it can get away with in the way of royalties. Having destroyed all other retailers of books, it will charge whatever it wants for ebooks and for physical books. Amazon has already moved in this direction. It is now, officially, a publisher, exhorting authors to bypass traditional publishers and publish through Amazon.

What the publishers have done in response to this threat is to establish the agency model. Far from fixing prices to the detriment of the public, they are trying to preserve their businesses. Incidentally, in order to do so, they are also preserving multiple sources of physical books and ebooks, including independent bookstores as well as chain bookstores, as well as chain retailers for whom books are merely part of their merchandise, such as Target, Walmart, and Costco. The agency model they have come

up with simply preserves all of these merchants, including us, from Amazon's unfair competition.

Amazon has been for many years an unfair competitor to merchants like myself because they have steadfastly refused to collect the state sales taxes that we are required by law to collect and cannot escape. Its founder and CEO, Mr. Jeff Bezos, has publicly stated many times that this was his intention from the beginning. Last December, Amazon mounted a promotion in which it invited people to enter our store, scan the barcode of a title with their cellphone, buy the book from Amazon, and receive an extra \$5.00 off of Amazon's price for it, simply for purchasing it in that manner. Thus, Amazon attempted to turn our bricks-and-mortar retail store, with its personnel, rent, overhead, and sales taxes, into an unpaid showroom of their products; an immoral, if not strictly illegal, tactic.

Amazon, responding to pressure from state governments, has cut deals with local jurisdictions to continue to be exempt from the local portions of sales taxes, on the promise of warehouses for their products which would hire local people. At the same time, Amazon has recently purchased a company that manufactures robots. Why? To do away with warehouse personnel.

Instead of attacking the publishers for creating the agency model, which does a reasonable if not perfect job of preserving competition and a vibrant book business with many participants, it is our belief that you should be concentrating on Amazon's evil intentions and monopolistic power. You have to ask yourselves: Is the public interest best served by attacking the publishers, authors, and retailers of the entire book business, or, is it best served by reining in one of the worst monopolistic corporations to ever come down the pike?

Rich Van Tassell, President

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