

**From:** Judy Wheeler [mailto:townecenterboq[REDACTED]]  
**Sent:** Wednesday, June 20, 2012 5:00 PM  
**To:** Read, John [John.Read@ATR.USDOJ.gov]  
**Subject:** opposition to United States v. Apple, Inc

Re: Comments on the Proposed Consent Decree in *United States v. Apple, Inc., et al.*, 77 Fed. Reg. 24518 (April 24, 2012)

Dear Mr. Read,

This is an opposition to the proposed consent decree with Hachette, HarperCollins and Simon & Schuster because it requires that the Agency Model for the sale of e-books be eliminated by these three publishers for two years.

I am the owner of an independent bookstore and believe the agency model has been good for our channel, good for all bricks-and-mortar bookstores, good for publishing, and, most importantly, good for readers and book buyers. Since its introduction, the agency model has corrected a distortion in the market fostered by below-cost pricing, predominantly led by Amazon.com, the ultimate result of which is, we believe, to reduce or to eliminate competition among both retailers and publishers.

Before the introduction of the agency model Amazon had a 90% share of the e-book market which they were selling below cost and below the price others were able to purchase the product. The agency model introduced in 2010 made e-books economically viable and allowed Barnes & Noble, Google, Apple, Kobo, along with indies and others to join the market making it far more competitive and diverse.

My store is one of hundreds waiting on the sidelines to see if below cost pricing of e-books will be eliminated and it will remain cost effective to incur the set up expense of selling them.

Not only is Amazon a power buyer and power seller, it is a classic free-rider that has long enjoyed at least two major advantages over its brick-and-mortar counterparts: (1) Amazon can and does free ride off the sales and promotional efforts of bricks- and-mortar stores; and (2) state governments have subsidized Amazon with sales taxes avoidance. Unlike bricks-and-mortar bookstores, amazon does not collect sales taxes in many locales.

Eliminating the agency model can only be bad news for the reading public, resulting in a cultural landscape offering a far less diverse range of titles being published and a much-diminished range of publishers. It will only punish indie booksellers and other e-book distributors who entered the market after the Agency Model was adopted by changing

the terms of their business arrangement in a way that facilitates below cost-pricing by a power buyer, and likely leading to a monopoly for that buyer.

I ask that the final consent decree not require publishers to drop the agency plan as a condition of settlement.

Sincerely,

Judy Wheeler, owner  
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