

July 14, 2015

The Hon. William J. Baer
Assistant Attorney General for the Antitrust Division
United States Department of Justice
Washington, DC

Dear Assistant Attorney General Baer:

On behalf of the American Booksellers Association, a 115-year-old national trade association representing America's independently owned bookstores, which do business in more than 2,200 locations nationwide, we are writing to urge that you give careful consideration to the letter sent to you on July 14, 2015, by Authors United.

A central tenet of the ABA's mission is to ensure that a broad array of books is as widely available to American consumers as possible. The greater the number of books, the greater the number of voices and ideas; the greater the number of voices and ideas, the richer the lives of our citizens and the stronger our society.

As with our author colleagues, we are concerned that the mega-book-retailer Amazon.com has achieved such considerable market power with such questionable business tactics that it is undermining the ecosystem of the entire book industry in a way that will be detrimental, especially to mid-list authors, new authors, and minority voices. A May 2014 study from the Codex Group, a respected industry research organization, found that Amazon has a 64 percent market share of e-book sales and a 41 percent market share of all new book sales.

Given Amazon's dominant market share, no publisher — regardless the size — can afford to not do business with them, whatever the cost. And no one knows this better than Amazon, which has ruthlessly cut off the sales of publishers large and small when they have not yielded to Amazon's strong-arm negotiating demands.

While independent bookstores have done well the last few years by becoming vital centers of their communities, and by providing literary experiences and personalized service that cannot be replicated online, their continued viability and growth will only be possible if they can continue to offer their customers the unparalleled opportunity to discover new authors, especially debut authors and authors from smaller publishing houses.

We fear that Amazon's business tactics directly threaten publishers' ability to support these authors and publications, which take time to identify, edit, market, and support — business activities previously supported by publishers' profits on bestselling works sold by mega-retailers such as Amazon. We have already seen fewer titles published by the major publishing houses each year. And while it might be tempting to chalk this up to a changing economy, the truth is that these changes have been manipulated by one retailer, which uses scorched-earth tactics to extract concessions and kickbacks from publishers in exchange for offering their books for sale.

Last year's dispute between Amazon and Hachette, pursuant to which Amazon decimated Hachette sales and author royalties in order to extract its preferred payment terms, is but one example of the company's misuse of its extraordinary market power. Other examples include:

1. **Predatory Selling:** Huge numbers of book titles appear to be sold below cost, and indeed it is not clear whether Amazon makes money on its book sales at all, or simply uses the category as a loss leader to entice sales on other segments of its websites. Discounts of 50 percent or more on leading new titles are the norm in circumstances where the wholesale price is typically 50 percent of the recommended retail price.

2. **Abuse of Monopsony Power Over Publishers:** In addition to the Hachette dispute, Amazon has engaged in various punitive tactics designed to force major and smaller publishers to do as Amazon dictates. Measures include delisting books, delaying delivery, removing books from pre-order, discriminating by saying a specific title from a particular publisher is not available but similar titles are available from others, etc.

3. **Closed Kindle E-book System:** Unlike other e-readers, Kindle e-readers and the Kindle app are configured to allow readers to only read books sold by Amazon and using its proprietary format. E-pub and PDF formats, which are industry standard formats widely read on other devices, cannot be displayed on a Kindle, further enhancing and perpetuating the retailer's 64-percent e-book market share.

4. **Free Riding:** Amazon is the classic free-rider. Amazon has long enjoyed three major competitive advantages over its brick-and-mortar counterparts: Without any physical stores, Amazon has low fixed costs, which enables it to offer lower prices than brick-and-mortar stores, even when not selling below cost. Amazon can and does free ride off the sales and promotional efforts of brick-and-mortar stores (consumers browse the books at brick-and-mortar stores and then purchase them online at lower prices), greatly encouraging "showrooming." Showrooming is the phenomenon whereby customers go to a physical bookstore to make a purchasing decision but actually purchase the item from an online retailer, in most cases Amazon. Amazon has even created an app to facilitate this practice, which allows a customer to scan the barcode of a book in a brick-and-mortar shop and complete the purchase from Amazon's website through their smartphone. Multiple industry research studies demonstrate that this is occurring, and publishers themselves have noticed increased Amazon sales during author events at bricks-and-mortar bookstores. State governments have subsidized Amazon with sales taxes avoidance. (Unlike bookstores, Amazon does not have to collect sales taxes in many locales.)

We are pleased to join with our colleagues from Authors United in urging that these matters receive the attention of the Department of Justice.

Sincerely,



Oren J. Teicher, CEO
American Booksellers Association



Betsy Burton, President
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The King's English Bookshop
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