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Back Talk-Does Santa Like Differential Pricing?

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Back Talk — Does Santa Like Differential Pricing?

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It's the holiday season. It's a time of giving, of merriment, of peace and love. For these reasons I hoped Santa would find his way through the smog of LA to southern Arizona with some good news that I could write about, e.g., in 2013 public libraries will be getting sufficient budget increases to reopen closed branches; that the concept of a school library, with a librarian, might again become a reality; that my friends at Elsevier had decided to drop their prices back to 1965 levels; or that the University of Hong Kong had dropped its retirement age rule so I could return to the land of yak milk and honeyed BBQ pork. But that was not to be. Instead I got an email from Scrooge Strauch asking when my Back Talk column would arrive.

I specifically didn't want to talk about publishers again. In my last article I chronicled their efforts to throw authors, bookstores, and readers "under the bus." Besides, I love publishers: my son works for one; they produce wonderful books that I can buy for my Kindle; and without them, my local double-wide public library would be empty. But I couldn't help myself when I read in OCLC's *Above the Fold*¹ that Wiley was challenging the *First Sale Doctrine*. When I read that, I decided I needed to take another good-natured whack at them.

In this case Wiley claims that a foreign student from Thailand broke the law when he got friends and family to buy and ship him textbooks produced and sold in Asia where they were priced lower than in the U.S., so he could resell them online to students in America (*Kirtsang v. John Wiley & Sons, Inc.* 11-697). The student was first sued in a Federal Court in New York and lost. He also lost at the Appeals Court level and was ordered to pay \$600,000 in damages. Proving that while you may not be able to get blood from a turnip, you can inflict pain and suffering, they settled for the student's golf clubs and computer.

Wiley, and other publishers, typically indicate in their foreign

editions something to the effect that "This book is authorized for sale in Europe, Asia, Africa, and the Middle East only and may not be exported. Exportation from or importation of this book to another region without the publisher's authorization is illegal."² They do this so that they can practice differential pricing. That is, they can price a book differently for different markets.

Actually, I am a great fan of differential pricing. Without it, not only would most readers in developing countries be put at a disadvantage, but the production of pirated works would be encouraged, and publishers would get nothing. Forty-plus years ago this was the case for many books being reprinted without publisher permission in Taiwan. While it was good for me personally since I could buy new *NYT* best-sellers in local bookshops for a fraction of the real price, publishers were being robbed. More than a dozen years ago this same sort of thing was still going on in China, but in this case it was expensive science journals that were being photocopied on a large scale and sold to libraries. Now, with differential pricing, this is no longer the case in China.

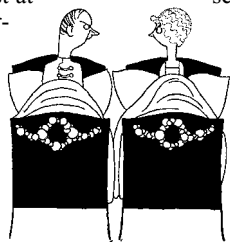
But differential pricing isn't just to prevent piracy. Another flavor of it, introductory pricing, where different prices are employed at different times in the marketing process, permits the publisher to get its toe into the door. It gives them something to sell with the expectation that at some future moment, the purchaser will buy more of what is being sold for the full price. Librarians may not like "introductory pricing" schemes, but they are used to them, and they are an effective way of selling serial forms of information.

So we can see why Wiley decided to use differential pricing in developing countries, but why did it go to such lengths to prosecute a single entrepreneurial foreign student who detected a way of manipulating this pricing technique to make some extra money? Did they fear that if

they gave him "an inch" he or someone else "would take a mile?" One of their lawyers said, "We're going to help the global economy with this" and "the whole idea of the copyright laws is to provide people with an incentive to create books, movies, or other works of art. If you take away that incentive, you're not going to have creators out there doing things that give us pleasure or educate us."³ While I don't doubt that they truly believe in the value of copyright as an incentive for authors and publishers to invest their capital, I am still curious why they have gone to such lengths to prosecute this student.

I think it has to do with the Internet. In the pre-email/Internet era, to gather information on what texts would be used, to communicate this information to friends overseas, to buy and then market the availability of these textbooks to other students, and then to ship the texts and collect the money owed would have been impossibly difficult. But with the Internet, all this student had to do was modify how Amazon does business on a very small scale to make some money. Moreover, it is understandable that the publisher might have worried that some bookseller might copy the student on a much larger scale.

However, having said the above I can't help but wonder why doesn't the publisher drop the prices of textbooks for everyone to remove the financial incentive of reselling the textbooks from one market to another, and why can't the publisher follow the example of Amazon and use the Internet to market the books direct to the students? Maybe they could provide the first few chapters as eBook excerpts for students placing online orders for the print version and/or, heaven forbid, provide e-versions which would help students truly understand the content and do well on their tests instead of staying with the old ways. I think we all need to think about how to use the Web to improve things and not spend so much time and energy on protecting the old ways of doing things. Consequently, I suppose I should be open to rethinking how the Internet might be used to accomplish the wished for end-goal purposes mentioned in the first paragraph of this Back Talk.



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Endnotes

1. Above the Fold. <http://www.oclc.org/research/publications/newsletters/abovethe-fold.html>
2. Mears, B. Supreme Court to hear arguments in the case of a student who resold books. *CNN Justice*, October 27, 2012. Retrieved from http://www.cnn.com/2012/10/26/justice/court-student-copyright/index.html?utm_source=WhatsOuntsEmail&utm_medium=Above%20the%20Fold&utm_campaign=Above%20the%20Fold.
3. Mears.