

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<hr/>		)	
UNITED STATES OF AMERICA		)	
		)	
Plaintiff,		)	
		)	
v.		)	Civil Action No.12-CV-2826 (DLC)
		)	
APPLE, INC.,		)	
HACHETTE BOOK GROUP, INC.,		)	
HARPERCOLLINS PUBLISHERS, L.L.C.		)	
VERLAGSGRUPPE GEORG VON		)	
HOLTZBRINK PUBLISHERS, LLC		)	
d/b/a MACMILLAN,		)	
THE PENGUIN GROUP,		)	
A DIVISION OF PEARSON PLC,		)	
PENGUIN GROUP (USA), INC. and		)	
SIMON & SCHUSTER, INC.,		)	
		)	
Defendants.		)	
<hr/>		)	

**BRIEF OF BOB KOHN AS *AMICUS CURIAE* \***

\* Five-page version of Proposed Brief *Amicus Curiae* at Docket No. 97.

## TABLE OF AUTHORITIES

### Cases

<i>Barry Wright Corp. v. ITT Grinnell Corp.</i> , 724 F.2d 227, 231-33 (1 <sup>st</sup> Cir. 1983).....	3
<i>Broadcast Music, Inc. v. CBS</i> , 441 U.S. 1, 8-12, 21, fn 34 (1979) .....	2, 3, 5
<i>Broadcast Music, Inc. v. Moor-Law, Inc.</i> , 527 F.Supp. 758, 763-5 (D. Del. 1981) .....	2
<i>CBS v. ASCAP</i> , 337 F.Supp. 394 (S.D.N.Y. 1972).....	5
<i>CBS v. ASCAP</i> , 400 F.Supp. 737, 755-56, 760-61, 765 (S.D.N.Y. 1975) .....	5
<i>CBS v. ASCAP</i> , 562 F.2d 130, 134-40 (2d Cir. 1977).....	5
<i>CBS v. ASCAP</i> , 620 F.2d 930 (2d Cir. 1980), <i>cert. denied</i> 450 U.S. 970 (1981) .....	5
<i>FTC v. Indiana Fed’n of Dentists</i> , 476 U.S. 457, 459 (1986).....	2, 5
<i>Northeastern Telephone v. AT&amp;T</i> , 651 F.2d 76, 87-9 (2d Cir. 1981), <i>cert. denied</i> , 455 U.S. 943 (1982)..	3, 4
<i>Todd v. Exxon Corp.</i> , 275 F.3d 191, 201 (2d Cir. 2001).....	3
<i>United States v. Keyspan Corp.</i> , 783 F. Supp.2d 633, 637 (S.D.N.Y. 2011).....	1, 4, 5

### Statutes

<i>Copyright Act</i> , 17 U.S.C. §101, et. seq. ....	1
<i>Sherman Act</i> , 15 U.S.C. §2 .....	4
<i>Tunney Act</i> , 15 U.S.C. §16(f).....	3

### Rules

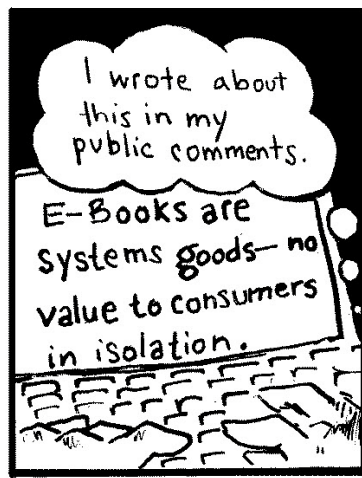
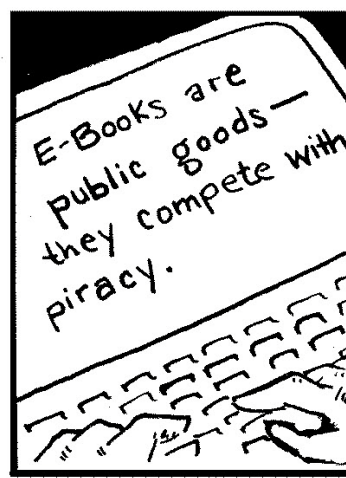
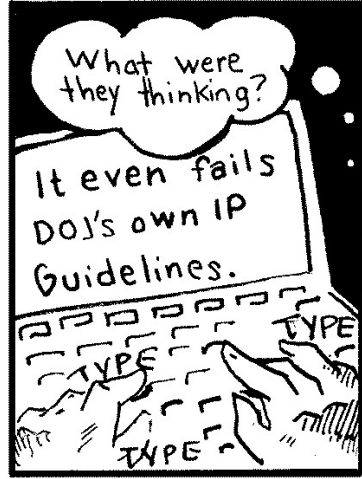
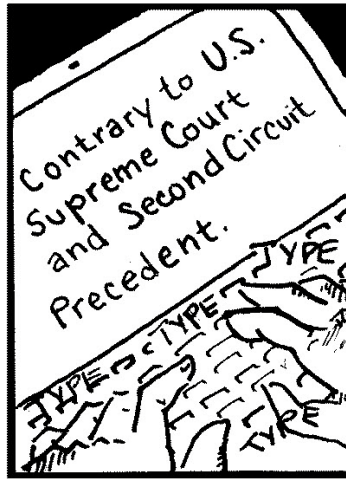
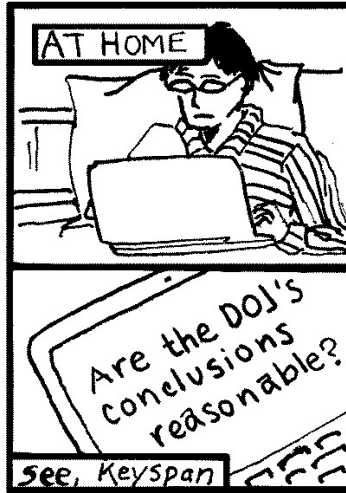
<i>Antitrust Guidelines for Licensing of Intellectual Property</i> , §§2.3, 2.3.1, 3.2.1, 3.4, 4.1 (DOJ/FTC 1995)	1, 2
<i>Horizontal Merger Guidelines</i> , §§2.2.3, 4, 12 (DOJ/FTC 2010) .....	2

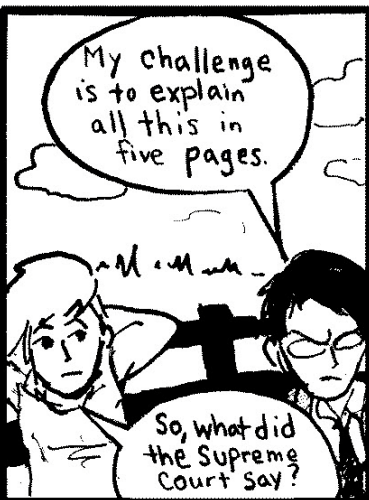
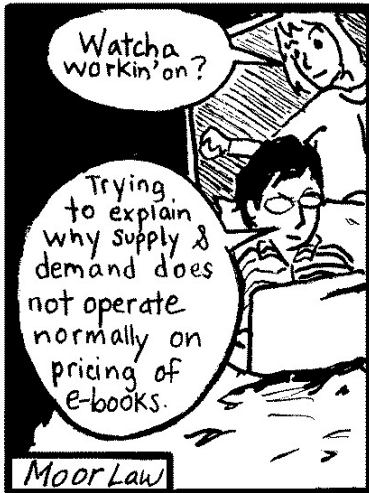
### Articles & Treatises

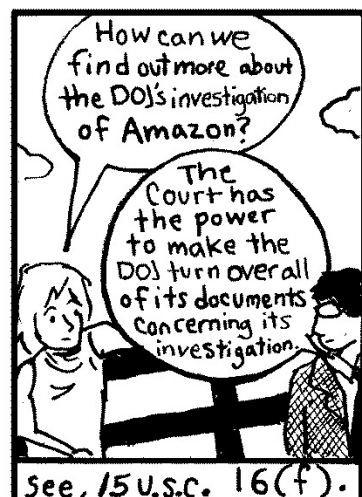
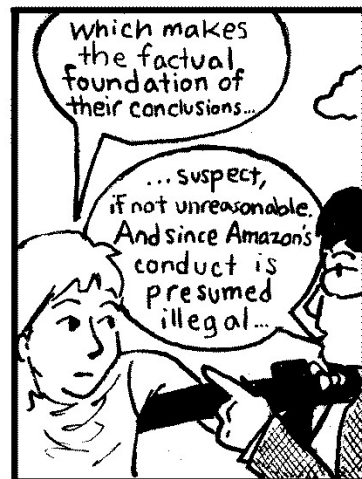
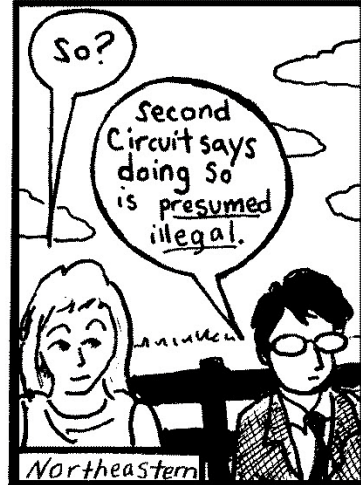
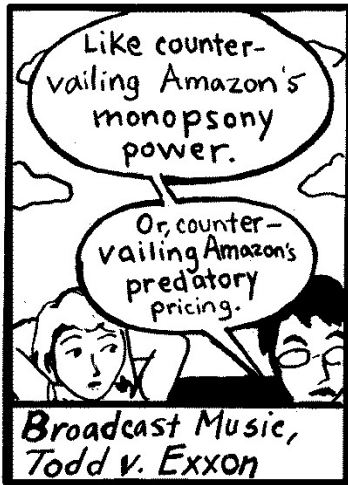
John Cirace, <i>CBS v. ASCAP: An Economic Analysis of a Political Problem</i> , 47 FORDHAM L. REV. 277, 293-94 (1978-79) .....	2, 3, 5
Philip E. Areeda & Donald F. Turner, <i>Predatory Pricing and Related Practices Under Section 2 of the Sherman Act</i> , 88 HARV. L. REV. 697, 712 (1975).....	4
Richard S. Wirtz, <i>Rethinking Price-Fixing</i> , 20 INDIANA L. REV. 531, 627 (1987) .....	4
Christopher R. Leshe, <i>Achieving Efficiency Through Collusion: A Market Failure Defense to Horizontal Price Fixing</i> , 81 CALIFORNIA LAW REV. 243, 267-272 (1993).....	4
Roger D. Blair & Jeffrey L. Harrison, <i>Antitrust Policy and Monopsony</i> , 76 CORNELL LAW REV. 297, 308 (1991).....	3

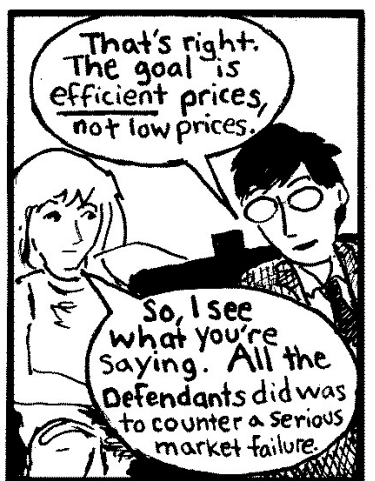
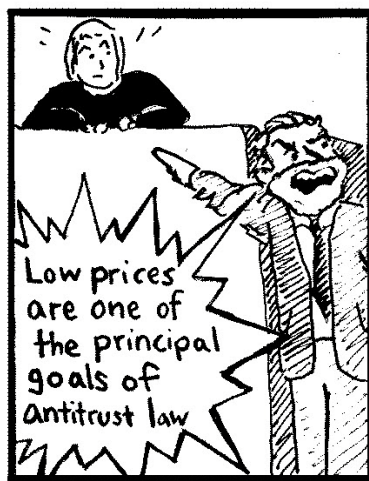
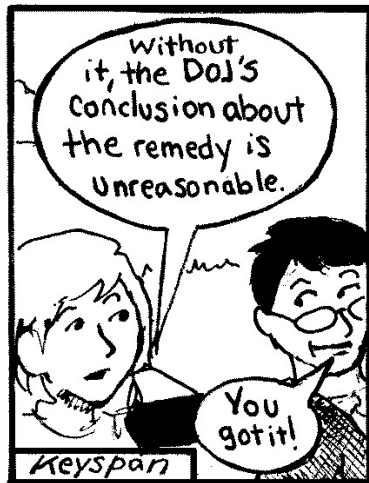
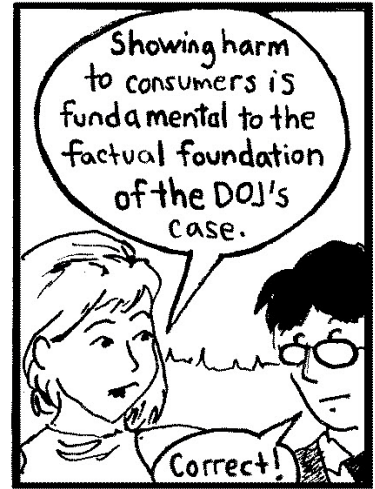
### Court Documents & Public Comments

Comments of Bob Kohn, ATC-0143 (May 30, 2012) .....	1
Complaint, 12-02826 (DLC), Docket No. 1 (April 11, 2012) .....	3
Competitive Impact Statement, 12-02826 (DLC), Docket No. 5 (April 11, 2012) .....	3
Proposed Final Judgment 12-02826 (DLC), Docket No. 4 (April 11, 2012).....	5
DOJ Response to Public Comments, 12-02826, Docket No. 81 (July 23, 2012) .....	3,4
Memorandum & Proposed Brief Amicus Curiae of Bob Kohn, Docket No.97 (August 13, 2012).....	i











© JULIA ALEKSEYEV + BOB KOHN

Dated: September 4, 2012

Respectfully submitted,



---

BOB KOHN

BOB KOHN  
(California Bar No. 100793)  
140 E. 28<sup>th</sup> St.  
New York, NY 10016  
+1-408-602-5646  
[bob@bobkohn.com](mailto:bob@bobkohn.com)