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**Before the Department of  
Commerce**

In the Matter of

**The State of Counterfeit and Pirated  
Goods Trafficking and Recommendations**

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Docket No. 190703544-9544-01

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Document No. 2019-14715

**Comments of the Authors Guild, Inc.**

The Authors Guild submits this statement on behalf of its almost 10,000 members in response to the Commerce Department’s Request for Public Comment concerning the sale of counterfeit and pirated goods trafficked through online third-party marketplaces. Our members include novelists, journalists, academics, genre and children’s book authors, freelance writers, poets, and self-published authors. The surfeit of pirated and counterfeit books in online marketplaces is a matter of great—and growing—concern to these and the rest of America’s writers.

A 2017 Nielsen consumer survey covering ebook piracy found \$315 million in U.S. book sales was lost annually due to piracy.<sup>1</sup> Based on the complaints we receive from our members, we believe that number has increased dramatically since the survey was conducted. In the last two years, the number of piracy and counterfeiting issues reported to the Authors Guild’s legal department has increased at least tenfold. Authors are already struggling financially—their book-related income is down 42% in the last decade—but the recent surge in book piracy and counterfeiting is stealing even more money out of their pockets, money desperately needed to feed their families and pay their rent or mortgages. It is clear that the current approach to enforcement against copyright piracy and counterfeiting is not working. We are grateful to the Department of Commerce for initiating this much-needed investigation into the conditions that have fostered the growth of counterfeiting and piracy in third-party marketplaces.

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<sup>1</sup> Digimarc Corporation Press release, <https://www.prnewswire.com/news-releases/e-book-piracy-costs-publishers-315-million-in-lost-sales-300423534.html>

## **Overview of Book Piracy and Counterfeiting**

### *The Terms “Counterfeit” and “Pirated” as They Pertain to Books*

Book piracy today takes several forms. The most prevalent are (1) the sale or free distribution of unauthorized ebooks through online marketplace and, most commonly, through websites devoted to piracy, (2) the sale of physical pirated books through online marketplace, and (3) the recent “book-selling scams” that involve either trademark counterfeiting, copyright piracy, or both: “author doppelganging,” “title cloning,” cut-and-paste plagiarism, and other rip-offs—which are perpetrated in online marketplaces like Amazon, eBay and Google (see July 26, 2019 *LA Times* op-ed “Online Book-Selling Scams Steal a Living from Writers” by Authors Guild President Doug Preston describing these practices.)<sup>2</sup>

Because the Presidential Memorandum on “Combating Trafficking in Counterfeit and Pirated Goods” limits the definition of “pirated” to tangible media,<sup>3</sup> we focus in these Comments on physical (or “print”) book piracy, by which we mean the unauthorized reproduction and distribution of printed copies of books in violation of copyright. (That said, we encourage the Department of Commerce to investigate online piracy as well; ebook piracy is rampant and growing today and is an equal threat to authors’ livelihoods.)

The most pervasive type of physical book piracy that we see today is the unauthorized reproduction of books in their entirety—cover art and copy included—that are sold on online marketplaces by third-party sellers. These pirated copies are also counterfeits (and we refer to them as “counterfeits”) because they reproduce and misappropriate the publisher’s mark, the author’s name, and other proprietary trademarkable attributes from the covers of the books in an effort to pass them off as the authentic books originating from the publisher. Unlike a deal-seeking shopper buying knock-off products on the sidewalk, the consumer of a counterfeit book bought on a platform like Amazon assumes she is purchasing a legitimate book and, unless the quality of the reproduction is particularly poor, won’t know any better when the counterfeit arrives at her home.

### *Recent Trends in Counterfeit/Pirated Book Practices*

In the last couple of years, we have seen an explosion of counterfeiting in the commercial fiction and nonfiction markets; whereas in the past, counterfeiting was mostly a problem in the higher-

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<sup>2</sup> <https://www.latimes.com/opinion/story/2019-07-25/amazon-books-counterfeit-authors-copyright>; also see <https://www.theguardian.com/books/2019/mar/28/plagiarism-book-stuffing-clickfarms-the-rotten-side-of-self-publishing>

<sup>3</sup> We refer to the preferred definitions of these terms as cited in the Presidential Memorandum: “For purposes of this memorandum and the reports described herein:  
(a) ‘Counterfeit’ means the use of a ‘counterfeit mark’ as defined in 18 U.S.C. 2320(f)(1), in connection with goods, services, or labeling or packaging; or mislabeled, substandard, or fraudulently obtained goods, even when such goods do not involve a counterfeit mark.  
(b) ‘Pirated’ means the reproduction of copyrighted works in a tangible medium in violation of the rights of the copyright owner, as defined in 17 U.S.C. 501 et seq.”

priced educational book market. This is likely because of the improved quality and cheaper cost of print-on-demand (or “POD”) services and ease of using them to create counterfeits.

The most concerning type of piracy is that conducted by criminal enterprises, often based outside of the United States, that create counterfeit copies using print-on-demand or inexpensive offset printing services based in countries such as China and pass the copies off as authorized editions. Sometimes the copies are low-quality PDFs or other poor copies, but recently we are seeing high-quality counterfeit copies that look like the original. (Indeed, several publishers have told us that sometimes people can only tell the difference when the books are viewed side by side.) The quality of some print-on-demand services has improved to the point that books that do not include a lot of images can look as good as offset printed copies. Print on demand is less expensive than offset printing for smaller print runs and requires fewer start-up costs. A number of U.S.-based self-publishing services will provide printed copies of any book that is uploaded—without, it would appear, checking to see whether the books are infringing. In some cases, we have seen counterfeits created using Amazon’s own Kindle Direct Publishing’s (KDP) print services (formerly CreateSpace).

The counterfeiters sell the printed counterfeit copies directly to consumers by setting up third-party seller accounts on Amazon, eBay, and Google Play. Based on the fact that unsuspecting bookstores and third-party sellers have bought and resold counterfeits, we believe that some counterfeiters sell wholesale or at high discounts to third-party sellers or retailers based in the United States.

Our Comments address applicable questions posed in the Department’s Comment Request in turn. The numerals in our responses below refer to the questions in the Request. In preparation for these Comments, we asked our members to provide examples of their books being pirated and attach a selection of those as Exhibit A.

### **1. Authors Are Robbed of Income by Counterfeit and Pirated Books Online**

Many books, especially the kind that require research and that educate, are the product of at least two or three years of work, often more. The highly acclaimed, award-winning books by Robert Caro about Lyndon Johnson have each taken about eight to ten years to write.<sup>4</sup> Two-time Pulitzer Prize-winning biographer T.J. Stiles says in *Among the Digital Luddites* that he has never written a book in less than four years.<sup>5</sup> The piracy of a single book can amount to theft of years of full-time work. Few crimes compare in how they affect the victim’s livelihood.

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<sup>4</sup> <https://time.com/5564169/historian-robert-caro-interview/>; <http://www.robertcaro.com/about-robert-a-caro/>

<sup>5</sup> <https://academiccommons.columbia.edu/doi/10.7916/D8K35V2G>

Under today’s two principal publishing models, authors are compensated for their work either by (1) selling the right to publish the book in various formats to “traditional” publishers in consideration for royalties—a percentage of each book sale—and often an advance against those royalties, or (2) self-publishing the book through a variety of services and platforms, where the service takes a percentage commission per book sale and pays the self-published author the remaining percentage. In each case, authors are dependent on sales of their books to earn money. Whenever a consumer buys a pirated rather than a legal copy, the author loses income.

According to the Authors Guild’s last two surveys, authors’ incomes are decreasing at alarming rates, to the point where many are forced to take on other work or forgo writing for a living altogether—indicating that the copyright incentives are not working as they should. Writing-related earnings, for example, plummeted to a median of \$6,080 in 2017, down 42% since 2009.<sup>6</sup> *Full-time* U.S. authors, meanwhile, earned a median of only of \$20,300 from their writing. That’s well below the federal poverty line for a family of three or more. Over half of the authors surveyed earn less than the poverty level for an individual from their writing.<sup>7</sup>

Physical book piracy through online marketplaces is hardly new but, based on the number of complaints the Authors Guild has received, it has exploded in the last few years. Originally concentrated in the higher priced textbook and higher education markets, it has spread in the last two years to commercial fiction and nonfiction, with best-selling books particularly at risk. As print-on-demand technologies and services have improved in quality, the cost of printing books has decreased, and counterfeiting has become significantly easier.

According to Scott Kelly, Vice President of Virginia-based medical publisher Antimicrobial Therapy, counterfeiting stole “approximately 15 to 25 percent of our sales” for Antimicrobial Therapy’s most popular book, *The Sanford Guide to Antimicrobial Therapy*, amounting to “thousands of books.”<sup>8</sup> Christian publisher InterVarsity Press reported that “at least 15,000 counterfeit copies” of one of their books sold on Amazon over a nine-month period, with a “retail value totaling \$240,000.”<sup>9</sup> Self-published author and Authors Guild member Carol Scott lost “at least \$15–25k in revenue” over a six-week period when a third-party seller on Amazon began selling counterfeit copies of her books.<sup>10</sup>

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<sup>6</sup> The Authors Guild, *Authors Guild Survey Shows Drastic 42 Percent Decline in Authors Earning in Last Decade*, Jan. 5, 2019, available at <https://www.authorsguild.org/industry-advocacy/authors-guild-survey-shows-drastic-42-percent-decline-in-authors-earnings-in-last-decade/>.

<sup>7</sup> *Id.*

<sup>8</sup> Kaitlyn Tiffany, Vox, *How Amazon Benefits from Counterfeit Books*, Vox, June 24, 2019, available at <https://www.vox.com/the-goods/2019/6/24/18715584/amazon-counterfeit-book-problem-nyt-project-zero>.

<sup>9</sup> Christianity Today, *Amazon Sold \$240K of ‘Liturgy of the Ordinary’ Fakes, Publisher Says*, July 8, 2019, available at <https://www.christianitytoday.com/news/2019/july/amazon-counterfeit-ivp-tish-harrison-warren-liturgy-ordinar.html>

<sup>10</sup> Email on file with the Authors Guild.

A counterfeit paperback edition of award-winning author Lauren Groff's<sup>11</sup> book *Florida* was offered on the Amazon marketplace alongside the publisher's hardcover edition—as though it were the publisher's paperback edition—just after the hardcover had been released and a year before the paperback was scheduled to be released. We notified Amazon which immediately took the listing down—but were able to purchase a copy for investigation before the listing came down to investigate and we found that it was indeed a poor-quality pirated reproduction.

Counterfeiting and piracy levy a significant psychological toll on authors. Many authors use the term “violated” to describe their state of mind upon learning that a counterfeiter has stolen a work into which they have invested time, effort, and passion.<sup>12</sup> Doug Preston, President of the Authors Guild, described the first time he visited the pirate site Ebook.Bike and saw every book he had written—his entire life's work—stripped of protection and uploaded for anyone to steal: “I had the same sick feeling I had when I returned home one day and found my house had been robbed. Have you ever had someone break into your house, paw through your possessions, and take what they wanted? That's the feeling I had. It's horrible. To a writer, our books are like our children.”

## **2. Market Conditions Contributing to Book Counterfeiting and Piracy**

Online marketplaces and, in particular, Amazon, are a central part of the American book trade today. Amazon alone controls 64% of online sales of print books,<sup>13</sup> about 89% of all ebook sales,<sup>14</sup> and approximately 76% of sales by self-published ebook.<sup>15</sup> As a result, American authors and publishers cannot simply choose to not sell their books through online marketplaces like Amazon.

The internet platforms have little to no legal or financial accountability for the criminal piracy and counterfeiting that occurs through their marketplaces—despite the fact that they earn commissions and other fees from the sale of pirated and counterfeit products by third-party sellers on their platforms. This, we believe, is a primary contributing cause of the surge in piracy and counterfeiting through online marketplaces. Physical marketplaces are held accountable for the sale of counterfeit and pirated goods conducted in them. (See, e.g., *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259 (9th Cir. 1996).) To encourage internet entrepreneurs and to ensure

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<sup>11</sup> <http://laurengroff.com/about/>

<sup>12</sup> Kate Shellnutt, *Stealing Books in the Name of Self-Publishing*, The Atlantic, June 5, 2016, available at <https://www.theatlantic.com/entertainment/archive/2016/06/plagiarism-in-the-age-of-self-publishing/485525/>.

<sup>13</sup> <https://www.theatlantic.com/business/archive/2014/05/amazon-has-basically-no-competition-among-online-book-sellers/371917/>

<sup>14</sup> <https://www.bloomberg.com/graphics/2019-amazon-reach-across-markets/>;

<sup>15</sup> <https://www.authorsguild.org/industry-advocacy/six-takeaways-from-the-authors-guild-2018-authors-income-survey/>

the internet would flourish, our laws and court decisions have placed far less responsibility on online marketplaces than physical ones.

Other factors contributing to book counterfeiting and piracy include the low cost of entry into the marketplace, volume-driven business models, weak enforcement, the extraterritoriality of the actors involved in the production of counterfeit and pirated copies, and significant gaps in the legal and regulatory framework governing online marketplaces.

### *Counterfeiters and Pirates Earn Profits Without Cost*

The low cost of producing a counterfeit copy allows counterfeiters to dramatically undercut the price of an authorized copy and thereby steal customers from legitimate vendors. Counterfeit and pirated books can be sold cheaply because counterfeiters don't have to invest in design, editing, copy-editing, and marketing, and also don't pay authors anything in royalties or advances.

Counterfeiters anywhere in the world can use cheap POD services to remotely print and ship unauthorized print copies to customers.<sup>16</sup> They can sell the counterfeits in online marketplaces for less than the publishers because printing is their sole cost.

### *Volume-Driven Business Models*

Third-party marketplaces thrive on volume. Every transaction conducted through a given platform earns the marketplace listing fees and commissions—whether or not the product sold through the platforms is authentic or counterfeit, legal or illicit.<sup>17</sup> Therefore, it is in the interest of third-party marketplaces to increase the number of listings and transactions. Unlike direct retailers, the law does not view third-party retailers to be “sellers” and, as such, they don't owe affirmative guarantees of authenticity and merchantability with respect to products sold by third-party sellers.

In the digital content market, the combination of the focus on volume (as a factor of transactions and positive reviews) and the lack of platform accountability provides impetus for intellectual property theft, encouraging copyright infringement scams such as “copy-pasting”<sup>18</sup> and selling

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<sup>16</sup> POD publishers are not incentivized to alert authors or publishers that someone is counterfeiting their books, since counterfeiters boost POD revenues. For example, Phil Ollila, the chief content officer of Ingram Content Group (which includes POD publisher IngramSpark), admitted he did not alert No Starch that someone was infringing its copyright when a counterfeiter sent over digital files of No Starch works to be printed.

<sup>17</sup> Professional sellers on Amazon, for example, pay a \$39.99 monthly subscription fee and a per transaction commission: [https://services.amazon.com/selling/pricing.htm/ref=asus\\_soa\\_faq\\_p](https://services.amazon.com/selling/pricing.htm/ref=asus_soa_faq_p). eBay charges variable fees depending on volume and categories: <https://www.ebay.com/help/selling/fees-credits-invoices/selling-fees?id=4364>.

<sup>18</sup> Courtney Milan, *Cristiane Serruya is a copyright infringer, a plagiarist, and an idiot.*, Feb. 18, 2019, available at [http://www.courtneymilan.com/ramblings/2019/02/18/cristiane-serruya-is-a-copyright-infringer-a-plagiarist-and-an-idiot/?source=post\\_page](http://www.courtneymilan.com/ramblings/2019/02/18/cristiane-serruya-is-a-copyright-infringer-a-plagiarist-and-an-idiot/?source=post_page).



an existing book with a new author, title, and cover,<sup>19</sup> as well as scams including “doppelganging” and “title-cloning”—i.e., using an existing author’s name or a confusingly similar title to sell lower-quality books.

It should go without saying that these scammers are not authors or real publishers; rather, they are criminals with expertise in manipulating the online book marketplaces through illegal conduct. They engage in these publishing scams to profit off authors’ (often self-published) hard work and reputations. They know how to manipulate Amazon’s Kindle Unlimited pay-per-page scheme where an author is paid for each page read (as measured by the reading device). They buy Amazon ad space, use click farms, and write fake reviews in order to promote their so-called books on the best-seller lists and draw readers (and income) away from hard-working authors.

All these practices violate Amazon’s policies; and it must be said that Amazon has worked in good faith with the Authors Guild and other authors’ groups to address these and other, related issues, and it does try to keep up with the scams and counterfeiters. We also understand that Amazon will reimburse deceived customers who have purchased counterfeits, which policy does provide Amazon *some* economic incentive to eradicate counterfeits.

Amazon also relies heavily on automation and customer complaints (and through our partnership with them, author complaints) as a means to detect piracy and counterfeiting—albeit after they have occurred. Because it still earns commissions and fees from the sale of counterfeit and pirated books in the online marketplace, it may not have as much economic incentive as it otherwise would to eliminate those offerings *before* sales occur.

*“Popularity” or Paid Advertising as the Basis for Discoverability.*

Over a million titles are published in the United States each year, including self-published books.<sup>20</sup> Many of these are available through Amazon and other online marketplaces. At the same time, far fewer books are returned through search results or appear on the page as recommendations than a person is able to visually scan in a physical bookstore. As such, discoverability is one of the major challenges in online book marketplaces.

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<sup>19</sup> For example, romance author Becky McGraw accused author Laura Harner of plagiarizing her same-sex romance books by changing names, places, and the sex of one of the characters.

<http://www.ithenticate.com/plagiarism-detection-blog/when-romance-meets-plagiarism#.XT8LjXt7I9M>  
In addition, Nora Roberts accused fellow author Janet Dailey of having plagiarized Roberts’ book *Sweet Revenge*. <http://fallintothestory.com/plagiarism-then-and-now/>

<sup>20</sup> Bowker that reported over one million books were published in the U.S. in 2009 <https://outthinkgroup.com/the-10-awful-truths-about-book-publishing/>, and in its “Self-Publishing in the United States, 2012-2017”, Bowker reported that more than one million self-published books were published in 2017. <http://www.bowker.com/news/2018/New-Record-More-than-1-Million-Books-Self-Published-in-2017.html> <http://www.bowker.com/news/2018/New-Record-More-than-1-Million-Books-Self-Published-in-2017.html>

Unlike traditional brick-and-mortar bookstores, Amazon and eBay’s platform algorithms do not discriminate among books based on quality, or the reputation of the authors or publishers, but solely by popularity and whether someone has paid for a book’s conspicuous placement on the platform. If a book is not on the first page of results and does not appear among the five or so recommendations, it will rarely, be discovered and purchased. In this way, the criminal enterprises that sell the counterfeit books in online marketplaces and scam the system to make their way to the top of search results replace sales of the legitimate (and royalty-bearing) books. In some cases, the counterfeiters can even win the buy box on Amazon, ensuring that most sales will go to them.<sup>21</sup>

### *Burden of Discovery of Rightsholder; Reactive Rather Than Proactive Enforcement*

Internet platform terms of service, including those of third-party marketplaces, place the burden of discovering and reporting intellectual property infringement upon the rightsholder. As a result, writers spend the time and effort we want them to spend creating new works in combating pirates and counterfeiters in third-party marketplaces. If the third-party marketplace is based in a non-English speaking country, such as the South American giant Mercado Libre, there’s an added language issue for many authors.

Scott Kelly reports he has “spent hours” fielding angry customers, tracking down copies, and trying to work with Amazon over counterfeited copies of his books.<sup>22</sup> This reactive approach to policing for infringement, piracy, and counterfeiting means that writers and publishers are the ones who must invest time and energy in scouring the internet.<sup>23</sup>

When rightsholders report infringement, the platform’s response is often not swift enough to prevent harm or robust enough to provide restitution. Amazon and eBay both proscribe the sale of infringing and other illegal conduct in their terms of service, and they respond to complaints. Amazon has largely eradicated ebook piracy through its site, as we understand, by fingerprinting new ebooks to detect piracy before they are offered for sale. The task is more difficult for physical books, however, many of which Amazon does not fulfill and so never touches. Amazon reports that it has increased its efforts to identify sellers of counterfeit and pirated goods before they are approved by investigating certain red flags,<sup>24</sup> but they do not catch them all—at least not

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<sup>21</sup> Approximately 82% of Amazon purchases go to buy-box sellers (<https://www.sellerexpress.com/how-to-win-the-amazon-buy-box-in-2018/>), so it is especially damaging to authors and publishers when a counterfeiter snatches the buy box from them. For example, Carol Scott learned that the third-party vendor selling counterfeit versions of one of her books had snagged the buy box for that particular title, dramatically cutting into Scott’s own sales of that title.

<sup>22</sup> <https://www.nytimes.com/2019/06/23/technology/amazon-domination-bookstore-books.html>

<sup>23</sup> <https://arstechnica.com/information-technology/2019/02/amazon-caught-selling-counterfeits-of-publishers-computer-books-again/>

<sup>24</sup> <https://blog.aboutamazon.com/books-and-authors/our-response-to-the-new-york-times-story-on-book-counterfeiting>



yet. And, as mentioned above, not all sellers of counterfeits are bad actors and are aware that they are selling counterfeits.

On eBay, enforcement still appears to be largely reactive rather than proactive for counterfeit books. eBay's verification procedures remain lacking and are easy to circumvent by malicious actors. Our understanding is that anyone with a Facebook or Google profile or an email address can create an account and start selling on eBay.<sup>25</sup> Sellers and buyers are encouraged to use third-party payment services like PayPal, which can add another layer of anonymity.

### *Extraterritoriality*

Third-party marketplaces conduct business worldwide, which provides consumers with enormous variety of products, but also makes it easier for foreign-based counterfeiters to profit from illegal sales in the United States. If a counterfeiter is located in a foreign country or its revenue from counterfeits is placed in a foreign bank, it is far more difficult to sue the counterfeiter in the first instance or to recover any damages from it.

### *Second-Hand Book Marketplace*

Amazon's book marketplace allows third party sellers to sell new and used books, as designated by the seller, regardless of where or how the seller obtained the books. The industry has long accepted that previously purchased physical books can be resold as used books. Traditionally, those sales occurred in used bookstores and were called used books, regardless of their condition. Amazon and eBay have completely changed that market, however, and now books from many different sources are being sold through the marketplaces.

In Amazon's guidelines for third-party sellers, books are supposed to be sold as "used" unless they meet this definition: of "new": "New: A brand-new copy with cover and original protective wrapping intact. Books with markings of any kind on the cover or pages, books marked as 'Bargain' or 'Remainder,' or with any other labels attached may not be listed as New condition."<sup>26</sup>

This definition of "New" doesn't actually require the book to be new, or to have been sourced from the publisher—it just has to look new—despite the fact there are no authorized channels of trade through which a third-party seller should be able to acquire a truly "new" copy of a book at a price low enough to compete with the publisher copies furnished by Amazon. Yet, Amazon's listing for any given book often lists a dozen or more of "new" copies available from resellers at prices lower than the publisher's copies that are fulfilled by Amazon. The provenance of these

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<sup>25</sup> "To sign up for an eBay account all you need is your email address. Once your account is set up, you can buy, sell, and enjoy all the benefits of being an eBay member." eBay, <https://www.ebay.com/help/account/signing-ebay-account/signing-ebay-account?id=419>.

<sup>26</sup> <https://sellercentral.amazon.com/gp/help/external/200339950>

books is somewhat of a mystery. Publishers and others have suggested that these books must be unlabeled review copies; copies contractually obligated to be sold in a foreign market; books bought cheaply from big box stores; or overstock sold off cheaply by publishers.<sup>27</sup> But sometimes—even for books that were just published—there are so many “new” copies available in the marketplace from third-party sellers that many may be counterfeits. We have not evaluated this in any systematic way, such as through widespread test purchasing, but it is worth more investigation.

### **3. Effective Technologies to Reduce Book Counterfeiting and Piracy**

Despite the recent upsurge in trade book counterfeiting, Amazon has demonstrated a willingness to apply its technological capacities to mitigate both counterfeiting and piracy. In a response to a recent *New York Times* article calling out the tech giant for the plethora of counterfeit books available for sale on the platform,<sup>28</sup> Amazon outlined the measures it takes to combat the problem.<sup>29</sup> First, it has instituted requirements for new third-party sellers to make it harder for malicious actors to use its platform. These new requirements include identity verification through government-issued identification and verified bank records for all sellers, in addition to other documentation that may be required to conduct business in particular jurisdictions.<sup>30</sup>

It has also created a service called “Transparency” that could point a way forward. Products enrolled in the Transparency program are provided with a unique code at the unit level. When a product is purchased, Amazon scans this code to ensure the article is genuine before it is shipped to the customer. It’s clear that technology like this could go a long way toward ebbing the flow of counterfeit goods into the stream of commerce, but Transparency has not yet been widely enough adopted in the publishing industry for its effectiveness to be evaluated. It is an opt-in program and requires publishers and their manufacturers to enroll and set up the ability to print the bar codes on each book. Nonetheless, the technology exists, and the Guild is hopeful that broader implementation of such a regime could prove successful in identifying counterfeit sellers and shutting them down before they can sell their knock-off products.

Further, Amazon has worked productively with the Authors Guild to address counterfeits and pirate copies that our members identify and report to the Guild’s staff.<sup>31</sup> When authors discover

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<sup>27</sup> <https://www.authorsguild.org/industry-advocacy/amazons-buy-box-shake-update/>;

<https://www.authorsguild.org/industry-advocacy/amazons-taking-another-bite-publishing-pie/>

<sup>28</sup> <https://www.nytimes.com/2019/06/23/technology/amazon-domination-bookstore-books.html>

<sup>29</sup> <https://blog.aboutamazon.com/books-and-authors/our-response-to-the-new-york-times-story-on-book-counterfeiting> <https://www.nytimes.com/2019/06/23/technology/amazon-domination-bookstore-books.html>

<sup>30</sup> Amazon Seller Central,

[https://sellercentral.amazon.com/gp/help/external/help.html?itemID=ZQ9RTTZKQVHXMHF&language=en\\_US&ref=efph\\_ZQ9RTTZKQVHXMHF\\_cont\\_2](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=ZQ9RTTZKQVHXMHF&language=en_US&ref=efph_ZQ9RTTZKQVHXMHF_cont_2)

<sup>31</sup> <https://www.authorsguild.org/industry-advocacy/authors-guild-opens-channel-author-complaints/>

counterfeits, it is usually by happenstance or because readers can tell the books they ordered are counterfeit and advised the author. This leads us to wonder how many more counterfeits, especially high-quality ones, are being offered by third-party sellers that have not been identified.

#### **4.–5. Federal Agency Data Collection and Standardization of Data Sharing Practices**

An agency of the federal government could serve as a central resource for keeping lists and sharing information about those engaged in counterfeiting and piracy. Such an information clearinghouse and registry of known criminals in the bookselling space would help both internet platforms and booksellers identify those engaged in the production of counterfeit books. Rights holders could report known counterfeit copies and information they have about them as a way of notifying all platforms at once. Sophisticated counterfeiters are not likely to limit themselves to one marketplace. The online retail platforms like Amazon and eBay could be required to keep listed counterfeiters off their site, and they could contractually pass on that obligation to third-party sellers, forcing them to check the lists as well.

#### **6.–7. (See answers to 4, 5 and 8.)**

#### **8. Policy Remedies to Reduce Trafficking in Counterfeit and Pirated Books**

The Authors Guild believes that the most important policy changes to ameliorate rampant book piracy and counterfeiting are:

##### *A. Hold Online Platforms Accountable*

Third-party marketplaces must be held responsible for the sale of counterfeit and pirated goods through their platforms. Amazon and eBay—rather than authors or publishers—are best situated to detect and control the sale of counterfeit and pirated books. They, not the rights holders, profit from the sale of illegal books through their platforms since they collect commissions and fees from the sales. Further, since they have contractual privity with both third-party sellers and their customers, they are in the best position to address piracy and counterfeiting.

Our current laws, as interpreted by courts, favor shielding internet platforms from liability for the acts of their users. For instance, Section 512 of the Copyright Act and Section 230 of the Communications Decency Act have been interpreted to provide broad immunity to internet services for the acts of their users. But as has become abundantly clear in recent years, it is the platforms on which the illegal activities take place that are best situated to address piracy: they have the knowledge, contractual relationships, and ability to stop criminal activity on their sites. Moreover, they continue to profit from the increased site traffic, advertising revenue, and sales that the illegal activity brings at the same time they are shielded from liability. Since these platforms now possess an astronomical portion of the country's wealth, it is fair to say they no longer need the belts-and-suspenders protection from liability that the laws and court decisions have given them. It is time to hold them accountable.

Today. It is the copyright owners—along with the brick-and-mortar retailers—who are struggling for their survival, and yet they still bear the burden of detecting and notifying platforms of counterfeiting and piracy—which will always be after the fact and after sales have been lost. Moreover, unlike the online platforms, rightsholders (particularly individual rightsholders) have no control over the resellers, contractual or otherwise, or means of tracking or knowing what counterfeit sales have occurred or by whom, other than through chance discovery. It is time to revisit our laws and the way courts have interpreted them and place more responsibility for counterfeiting and piracy on the internet marketplaces, just as we have for physical marketplaces.

### *B. Increase Criminal Enforcement*

Commercial-level counterfeiting and piracy are criminal offenses. Law enforcement must start treating these crimes as such. If someone's purse is stolen or house broken into and robbed, the police will come to her aid. But if an author's book is counterfeited, she has little hope of getting law enforcement engaged even though the damage she suffers is far greater and more devastating.

The Authors Guild believes that the federal government should start providing far more resources to government agencies charged with law enforcement for intellectual property crimes. As a nation, we need to start treating intellectual property theft as a real crime and stop paying mere lip service to the need for more enforcement. This is particularly true when dealing with foreign-based counterfeiting operations where the author or publisher often will not have the means to effectively sue or obtain an award of damages from abroad. Increased collaboration among U.S. law enforcement and financial institutions with their foreign counterparts could make it easier to fine or bring civil cases against counterfeiters in any country and allow counterfeit victims access to counterfeiters' illegally obtained assets.

Moreover, every U.S. citizen who suffers criminal levels of piracy or counterfeiting should be able to obtain the assistance of criminal law enforcement just as easily as they can call the police and seek assistance when robbed.

### *C. Regulate Online Marketplaces*

One or more existing federal agencies could help to better regulate internet marketplaces. The history of litigation surrounding copyright and internet issues over the last two decades indicates that our courts are not well-equipped to shape rational, effective rules and policy regarding piracy and counterfeiting. At the same time, the marketplaces and counterfeiting and piracy practices change too rapidly for federal legislation to keep up.

Ideally, an existing agency would be charged with regulating internet platforms, including third-party marketplaces. The agency should be empowered to create regulations, provide guidance,

and issue administrative rulings in matters concerning not only deceptive commercial practices, but also those involving intellectual property and consumer privacy. Regulations could *require* online marketplaces to use anti-counterfeiting and anti-piracy measures—including artificial intelligence, in addition to human intervention—to police their platforms, and promptly remove violating accounts. If and when malicious activity is discovered, affected rightsholders—if unaware—should be notified. Online marketplaces could also be required to institute certain requirements for all third-party sellers using their platforms, including the provision of purchase orders of books from approved, verifiable wholesalers. Publishers would be given the opportunity to provide lists of authorized wholesalers and retailers, and purchase orders from those not listed would not be approved and/or subject to further investigation.

Lastly, the agency would also notify the counterparts of the Departments of State and Commerce and the Office of the U.S. Trade Representative in foreign countries where the counterfeiting activity is concentrated to aid in extraterritorial enforcement and exert diplomatic pressure.

*D. A Small Copyright Claims Court*

Finally, the proposed Copyright Alternative in Small Claims Enforcement Act of 2019 (the CASE Act, S. 1273, H.R. 2426) would enable the individual creator or small business to obtain some redress. The CASE Act would create an administrative tribunal within the Copyright Office to handle small copyright infringement claims at a minimal cost to rightsholders. At present, expensive civil lawsuits, which few rightsholders can afford, are the only means of intellectual property rights enforcement and restitution. The CASE Act hopes to change that and shift the internet landscape toward greater accountability for intellectual property theft. We hope that the Department of Commerce and its partner agencies will contemplate utilization of this tribunal in their plans to combat counterfeiting and piracy on third-party marketplaces.

Again, we are grateful to the Department of Commerce for engaging with this difficult but important issue, and we would be pleased to make ourselves available should you have any questions about these Comments.

Respectfully submitted by,

Mary Rasenberger  
Executive Director  
The Authors Guild

**Exhibit A: Responses from The Authors Guild Survey**

<b>Marketplace</b>	<b>How many third-party sellers are selling counterfeits?</b>	<b>Did you order a copy?</b>	<b>What about the book or seller alerted you to it being a counterfeit?</b>	<b>What action did you take (if any) and what was the outcome</b>	<b>Author Name</b>
Amazon	More than one	Yes	A counterfeit paperback was released at the same time as the real hardcover. The counterfeit was even listed on my official product page as a paperback edition. Everything about it suggested it was legitimate to the buyer.	Amazon removed the listing and refunded the customers who purchased the books. They refused to do the only thing I really wanted, however, which was to send the customers who had purchased the counterfeit copies a replacement copy of the real book. Obviously, the inferior product had the potential to do lasting damage with those buyers, as to new readers it would seem to indicate the quality of my work. The loss of readership could only be repaired by sending the real book, and this was refused. Amazon only took action following the intervention of Hachette corporate	Michael Koryta



				lawyers and the Hachette CEO.	
Amazon	More than one	Yes	The book was a hard cover edition, but when I checked, my publisher never issued a hard cover.	I did not take action.	Edwina Romero
Ebay	More than one	Yes	The cover was off-center and cropped. The publisher's symbol was not on the back.	Double Dragon Publishing said there was nothing they could do and they were not going to try. I contacted the seller and it was taken down, but it popped up on another seller's page soon.	Thomm Quackennbush
Amazon	One	Yes	The graphics on the cover and through the book were of lower quality and resolution.	The book was removed.	Lilith Dorsey
Amazon	More than one	Yes	Wrong cover stock, altered and missing information on the copyright page (no printing number, unlike the first through 6th printing editions of this Picador paperback), blurry text pages, wrong and crappy paper	Alerted publisher, got no satisfaction whatsoever.	Katharine Weber
Amazon	More than one	Yes	I am the publisher, author, and I own the copyright. All of the copies were pulped by the distributor when my rights reverted. Therefore the only copies that exist are the 15 or so that are in my possession. The	I have not taken action, but I am prepared to send a takedown notice.	Paula Nelson

			sellers are presenting themselves as legitimate sellers of the book with a sku # and blocking me from a sku for my own property.		
Amazon	More than one	No	Customer complaints about product quality.	Amazon took the product down, but also suspended sales of the legitimate book "while they investigated."  I'm briefly quoted in this New York Times article about the matter: <a href="https://t.co/o4qTS5cUjH">https://t.co/o4qTS5cUjH</a>	Author wishes to remain anonymous
Amazon	One	No	In November 2017, I noticed that someone uploaded a copy of my ebook with a different ASIN number and at a reduced price to Amazon. The book listing appeared as a new edition. They uploaded it using the name of my publishing house. I used the "Look Inside" feature and verified that the book was actually a copy of my book.	I notified Amazon immediately via email. They took the book listing down in approximately 10 days.	Author wishes to remain anonymous
Amazon	More than one	Yes	This books listed by the unauthorized third-parties were purported "used." But that was impossible because it was on	My publisher acknowledged the fraud, but regrettably informed me that there was no meaningful remedy	Author wishes to remain anonymous

			the same day of first publication by my publisher.	because of Amazon's stranglehold on the market.	
Amazon	One	No	I received two reviews, one in 2015, the other in 2016 complaining of very poor print quality on a Createspace paperback edition, although the proofs I had received earlier were adequate for POD. I suspect counterfeits are still in the POD system because I have seen images of the book with the cover askew, but have not been able to trace the source.	Initially I complained to Amazon, thinking the problem was poor print quality. They shrugged it off. I now believe the poor quality was from a pirated edition. I suspect third party sellers were involved, but am not sure.	Jeff Hecht
Amazon	One	No	They were selling my hardbacks as new for \$2.99. I assume they either bought up remaindered copies or are copy-righting them. It's a company called 8 Trax Media.	Absolutely nothing. I wrote to my publisher and urged them to do something - contact Amazon, etc - but nothing came of this. 8 Trax Media continues to sell my books as if they are new at an insanely discounted price. Neither myself nor my publisher gets any money from these sales and their sales don't count under my official count of sold books.	Rebecca Clarren

Amazon	More than one seller	No	It didn't have the correct cover image and it was obviously a copy of the pages.	I sent a takedown notice but no action was taken	Author wishes to remain anonymous
Barnes and Noble Online, Amazon, Book Depository	More than one seller	No	In the most recent case, neither the digital nor the print version of the book had been released yet.	I sent a notice. In some cases, the pirated books URLs were removed. I have lost	Collette Cameron
Google Play	One	No	This odd piracy - a reprint of Isaac Newton's 1704 book Opticks listed under the title of my 1987 book Optics: Light for a New Age. The contents and cover are by Newton, but I am listed as author.	Just posted a review explaining the situation. Do not know what to expect.	Jeff Hecht