

 THE Authors Guild

 Romance Writers of America®
The Voice of Romance Writers



*Sisters
in Crime*



 community authors
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Dear Mr. Carrigan and Mr. Zakharenko:

We write to express our grave concerns about Audible's easy exchange policy that allows Audible subscribers to "return" or "exchange" audiobooks within 365 days of their purchase, and deducts all those returns and exchanges from authors' accounts.

We are author organizations, authors, playwrights, independent publishers, and narrators impacted through joint royalty share programs via ACX writing in unity to demand that Audible immediately cease the practice of deducting royalties from authors' and narrators' accounts when a purchased audiobook is returned or exchanged days, weeks, or even months later, regardless of whether or not they have listened to the entire book.

This policy is in clear breach of the duty of good faith and fair dealing implied in the authors' agreements with Audible and ACX as it allows books to be purchased and listened to without paying the authors and narrators their royalties.

We further demand that Audible show the total number of unit purchases and returns on the author dashboards, not just the "net sales" already adjusted for any returns, and that this be split separately for each method of sale (audiobook units bought by AudibleListener members using their membership credit (AL); audiobook units bought by AudibleListener members not using their membership credits (ALOP); and audiobook units bought by customers not in an AudibleListener membership (ALC)). Audible must also satisfy the demands that many authors have made for a full and complete accounting of returns made pursuant to this policy since it was first implemented.

Collectively, we represent thousands of authors who have documented losses to their incomes as a result of this policy. We have seen alarmingly high rates of return, from 15% to 50% or more of lost sales over time. In many cases, authors may not even be aware that their royalty accounts are being debited for the returns since Audible reports only list “net sales” adjusted for returns.

The difficulty in ascertaining the exact losses to authors and narrators from the exchange benefit is compounded by the lack of transparency of the reporting and the subsequent difficulty being experienced by authors requesting reports on their returns, including the obdurate manner in which these requests have been met.

Every day, new authors step forward to report documented losses in their incomes. One author estimated (estimated because their request for returns reports had been ignored) their losses to be in the tens of thousands of dollars with return deductions eclipsing as much as 50% of their sales. The adverse effects of this policy on authors’ incomes are compounded by Audible’s active promotion of the exchange option via pop-ups in the Audible app during listening or once a listener has completed an audiobook, e-mail reminders to members, and promotional advertising on the Audible website inviting prospective members of Premium Plus and other various programs to “swap any audiobook for any reason, anytime, no questions asked.”

A customer service survey sent out as recently as November 2020 asked members to rank their level of awareness from “not at all familiar” to “extremely familiar” with the quick and easy “benefit” that allowed them to “exchange audiobooks at any time and choose another.” There is no way to read this description other than this “benefit” being the free exchange of a title.

While Audible claims on its website that “it reserves the right in its sole discretion to limit the number of exchanges and refunds allowed” if it finds that benefit is being overused, it does not limit returns or exchanges or identify what “overuse” is; nor are we aware of any instances where the exchange privilege was revoked for overuse. Multiple authors have brought this practice to Audible and ACX’s attention with evidence dating back to 2019 or even possibly before, but they have been assured that the benefit is “for active members in good standing and suspicious activity is rare.” Yet these authors have not been given any reports or evidence to demonstrate that this behavior is rare, nor have they any understanding of the methods by which Audible identifies “suspicious activity.”

In fact, there is growing evidence searchable throughout the internet that audiobook listeners take full advantage of the policy without penalty and encourage others to do likewise in various online forums, social media groups, and blog posts. Some recount using one credit to listen to an entire series of books by an author or return every audiobook of which they don’t desire a second listen in the future, as if a book only has value if it is to be reread. Authors are reporting damning results in recent experiments undertaken to discover if Audible was indeed suspending the privileges of policy abusers. According to one author who signed up for a 30-day Premium Plus free trial,

they were able to use their single “Audible credit” to return 28 books within days of becoming a member, the first nine of which were exchanged instantaneously via the Audible app and the rest exchanged through customer service channels—after the entire book or at least 75% had been listened to (on mute). Moreover, we are aware of many instances of Audible’s customer service staff encouraging members and non-members to take advantage of the exchange policy.

To be clear, allowing customers to make full use of a purchase for 365 days and then exchange that purchase for another product is not a real return or exchange policy, but a rental or subscription arrangement in disguise—which is outside of the scope of the rights authors grant to Audible when they assent to its terms of service. The terms only grant Audible the right to “sell” and “distribute” the audiobook in consideration for royalties for each copy sold. In breach of its own non-negotiable agreement, without asking or notifying the authors, Audible has put books into a de facto subscription program that pays no royalties and thereby robs authors of the income due under the contract.

Audible’s return and exchange practice is also starkly out of line with the policies of its parent company, Amazon, which only allow a 48-hour return period for accidental purchases of video content (only if the customer hasn’t started viewing that content) and seven days for returns of e-books accidentally purchased through the Kindle store. In short, Audible’s return and exchange program is only viable because it places the financial burden squarely on its authors’ shoulders.

We ask that Audible immediately end this bald attempt to expand its Premium Plus program and other variations of subscription membership at the expense of authors’ incomes. If Audible wishes to continue to permit the returns and exchanges of audiobooks after more than a reasonable time, say 48 hours, then Audible must do so at its own expense and pay authors the royalties due for the sales.

Sincerely,

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