

From: [REDACTED]
To: [FN-OMB-IntellectualProperty](#)
Cc: [REDACTED]
Subject: Copyright
Date: Thursday, March 18, 2010 11:32:15 AM

Dear Ms Espinel,

I am an author member of the Copyright Alliance and have been informed of your very welcome invitation to share my thoughts on my the infringement of my rights as a creator. Thank you for listening, and for taking action to protect authors' livelihoods from rampant copyright infringement and theft and also vicious attacks to our reputation and means of earning our income and paying our taxes.

My name is Rowena Cherry, also Rowena Beaumont Cherry. I am an author of humorous speculative romance. I am published by Dorchester Publishing and by New Concepts Publishing. I reside in Bloomfield Hills, Michigan.

Although I sold my print works to a New York publisher, I retained all my e-rights in hopes that one day I could make more than 4% royalties for the e-versions of my books. The two versions of my two works that are e-published have been pirated and links for "free" downloads are available on Astatalk and other secretive pirate sites, and my stolen works have been sold as part of "private e-book collections" on EBay and no doubt in other places also. My copyright has been infringed (repeatedly, but allegedly accidentally) by a major online retailer, and by small timers. Google does not help the situation, because Google search results direct the public to free downloads of ebooks. Yahoo is also a problem because its yahoogroups do not permit members of the public to report infringing links to "free" books. "Sharers" can and do also set up sites on Twitter, Blogspot, Wordpress, Facebook to post solicitations to infringe and provide links to where ebooks are available to download in violation of the rights owners' rights.

Several times a week (because I signed up for it), EBay sends my "reader" address an email with notices of all the ebooks currently being sold on EBay, and most of them are illegal bootlegged copies. I have informed EBay of infringements of books that are not my own, and have either been rebuffed, or ignored. EBay vendors do not have to list every book in a collection, which makes it hard for authors to know without supporting theft whether or not their books are in the collections. EBay permits vendors to post outrageous lies about what copyright is, and what first sale rights are for privately burned CDs of ebooks. There ought to be some provision for comment, so authors can publicly refute what the vendor alleges.

Often, an auction lasts a couple of days. By the time an author's complaint is processed, the auction is over, and sales of illegally copied works have gone through. The same applies to eCRATER, iOffer, Blujay.

One ebayer, now removed from the site, spent two years selling thousands of bootlegged ebooks. She built up a huge clientele, and a list of stolen books in excess of 11,000 titles. Her list covers 495 pages, with 50 titles per page. My novels are not (so far) on her list, but many of my friends' books are, and it seems that there is nothing any of us can do to gain restitution. We rather doubt that this woman is paying income taxes. She certainly does not pay royalties on the ebooks she resells time and time again.

The problem begins with universities which misinform teachers about copyright and fair use, and the teachers pass on inaccurate information to generations of students, who come out into the world believing that educational and library exemptions of fair use apply to entire romance novels read in private homes. Even some professors and lawyers do not seem to understand and appreciate that an author needs to be paid for her creative writing whether it is published as a paperback, hardback or ebook.

There surely ought to be some consequence for posting mischievous misinformation which induces innocent readers to break the law. Possibly...joint liability in the event that a downloader or file sharer is sued or prosecuted, and the defendant is able to prove that they relied upon a legal opinion from a lawyer or learned opinion from a professor.

Another problem is that manufacturers, universities, and other businesses support pirate sites with their advertising. Should advertisers be legally protected from consequences if their advertising dollars fund illegal activities and the non-payment of taxes? Also, PayPal and other credit cards assist pirates in their business by facilitating "donations" so readers who enjoy access to what they think are "free" ebooks can send a donation so that the pirates can buy (or steal) more ebooks to "share" in violation of an author's right to control the reproduction and distribution of her works.

I have spoken out against piracy, and have tried to educate readers. As a result, my website has been spam bombed to such an extent that I had to change servers and email addresses and pirates have posted vindictive reviews of my books on social networking sites and book selling sites. This, too, is a common practice. Pirates justify their theft by abusing the author and saying that the books are trash and not worth paying for.

I belong to the Copyright Alliance, as I have stated, also to AuthorsAgainstEBookTheft (a yahoo group) and to AuthorsAgainstCopyrightTheft (another yahoo group). I am also one of the four founding members of the Authors Without A Yacht groups on GoodReads, Facebook, Myspace and other social networking sites which are intended to discuss copyright issues in a friendly, non-confrontational way with readers.

Ms Espinel, the government could help in many ways.

1. You could require an explanation of intellectual property rights be posted on every uploading, downloading, and storage site, so that everyone uploading or downloading a file (at least of novella length) should have to read it and agree and supply their real name, email address and telephone number.
2. You could require that all uploads to sharing sites be reported to the IRS. Also, all ebay sales on ebooks, cds, etc. The IRS is most certainly owed a vast amount by EBay, PayPal etc for commissions and fees for bootlegged and infringing copies of copyrighted works. Simply auditing PayPal would send a powerful message. You could invite authors, agents and publishers to supply you with their records of who has stolen what from you, when and where. Most of us keep copies of our take-down notices.

At the moment, anyone can upload or sell anything without having to prove who they are or that they own the rights to an ebook etc. An author has to provide a great deal of information in a DMCA notice. It should at least be as arduous for the potential infringer as for the rights owner!

3. You could require sharing sites such as Scribd (which complies pretty well) Plunder, Astatalk, Underground, Zippyshare, etc to lodge copies of all take down notices with the IRS or with your office. You could give authors, agents and publishers an address to cc our take down notices and cease and desist letters. Even the appearance of scrutiny and a permanent record of all take down notices would be a help.

You would also have a Rights Registry to rival that being established by Google, so Google does not have a monopoly.

Possibly, there could be a Take-Down fee. Removing illegally uploaded files must be troublesome for the site, and they ought to be compensated for their time. If they are compensated, the government should receive income tax. Possibly, there should also be an element of restitution for the creators and their publishers. This would have to be accomplished by the internet equivalent of a security deposit, which would be forfeited in the event of a take down notice.

Given the costs of piracy to the economy, this could be very helpful to everyone except the pirates!

4. Although many pirate sites are located overseas, they have US servers (which are usually very good). The government could reward servers that are helpful, and take away the bandwidth of those that are not. "Sharing" sites use a lot of space. Downloading books and movies takes up a lot of space. Maybe net neutrality is not such a good thing when it facilitates copyright infringement and tax avoidance.

5. People who read illegally copied ebooks are not paying the creators, and they are not paying sales tax. Maybe there ought to be a question on the tax forms about downloading free ebooks/music/movies, just as there is a question about whether one has made sales tax free purchases, and whether one has employed a domestic servant or babysitter.

6. Only the government can garnish wages and benefits and attach assets. It seems wrong that a student can reproduce and distribute creators' works with relative impunity, and when sued, can declare bankruptcy and not pay his creditors and his fine, let alone provide any sort of restitution to the creators whom his activities have damaged. Poverty should not be a defence when someone can afford expensive internet equipment and services but alleges that they cannot afford to pay creators... and therefore has a "moral right" to steal, copy, and distribute.

7. Education is key. I am not in favor of prosecuting or suing people who genuinely do not know that "sharing" is wrong. The government could make a good start in schools, and also in emphasising that there is a difference between what can be done in a school or university, and what can be done in the home.

Thank you very much for your time.

Rowena Cherry

Space Snark™

EPIC Award winner, Friend of ePublishing for Crazy Tuesday

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