



August 5, 2016

Cory Doctorow  
Electronic Frontier Foundation  
815 Eddy Street  
San Francisco, CA 94109  
cory@eff.org

**Re: Labeling Practices in Digital Content Marketplaces**

Dear Federal Trade Commission,

We are a group of publishers, authors, consumer rights advocates and technologists. We write to you today regarding the confusing, inconsistent labeling practices in digital content marketplaces, such as Amazon's Kindle, Unboxed, and Audible stores; Apple's iTunes and iBooks stores; Google Play; the Kobo and B&N ebook store and many others. We would like the FTC to intervene with these marketplaces and require them to accurately label the products they sell.

These stores carry a mixture of products that are locked with some kind of technical protection measure (sometimes called DRM for "digital restrictions management" or "digital rights management") and those that are not technologically restricted.

The DRM-locked products are encumbered with a confusing spectrum of restrictions that consumers sometimes struggle to understand. Far more urgent, though, is the absence of any consistent signal to shoppers informing them about whether a given product is DRM-free or DRM-encumbered.

This matters because the public has demonstrated a strong preference for DRM-free ebooks and other electronic products. For example, in 2014, independent DRM-free ebooks across all marketplaces outsold DRM-locked ones 2:1 (<http://boingboing.net/2014/07/19/drm-free-indie-ebooks-outsell.html>).

The use of DRM is controversial among creators; studios, publishers and labels; and audiences. What should not be controversial is that a purchaser should be able to tell whether she is buying a DRM-encumbered product before she spends her money. DRM advocates argue that the sales of their products are proof that the public accepts DRM as a proportionate remedy for concerns about copyright infringement, but if that's so, the existence of a consistent labeling process will not reduce their sales.

If, on the other hand, some customers are unaware of DRM at the point of purchase, they are being mis-sold a product that comes with unexpected, unpredictable restrictions. The fact that buyers prefer DRM-free at the rate of 2:1 suggests that the market would benefit from better labeling across all categories and storefronts.

815 Eddy Street • San Francisco, CA 94109 USA

*voice* +1 415 436 9333

*fax* +1 415 436 9993

*web* [www.eff.org](http://www.eff.org)

*email* [information@eff.org](mailto:information@eff.org)

Pub

This is consistent with international norms. The OECD Consumer Policy Guidance on Intangible Digital Content Products ([http://www.oecd-ilibrary.org/science-and-technology/consumer-policy-guidance-on-intangible-digital-content-products\\_5jxvbrjq3gg6-en](http://www.oecd-ilibrary.org/science-and-technology/consumer-policy-guidance-on-intangible-digital-content-products_5jxvbrjq3gg6-en)) states:

“In the case where digital content products are offered on terms that are more restrictive than those that apply to tangible formats, the consumer should, where the terms are not self-evident, be clearly and conspicuously informed about them. . . . Information should include general and specific conditions regarding acquisition, access and usage of the products, in particular those which are not self-evident, such as: (a) Any limitations on the extent to which the product can be shared with other parties. (b) Any limitations on the extent to which the product can be copied for personal use. (c) Any limitations on the type or number of devices or applications that can be used to access and use the product. (d) Any unexpected conditions under which a product or product access and usage could be modified by businesses following lawful acquisition by consumers. (e) Any limitations on accessing a product in different jurisdictions. (f) Any technical measures that have been put in place, including any effects that these measures may have on product or device usage. . . . Businesses should ensure that their advertising for digital content products is not inconsistent with product usage and access conditions. They should provide consumers with summaries of the key terms and conditions governing the acquisition and usage of digital content products in a clear, conspicuous and unavoidable manner prior to consumers’ acquisition of such products. Stakeholders should work together to develop effective approaches for conveying such information to consumers.”

Similarly Article 5 of the EU Consumer Rights Directive (2011/83/EU) provides:

“the trader shall provide the consumer with . . . [information on] the functionality, including applicable technical protection measures, of digital content . . . [and on] any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.”

We would like electronic sellers to add a category to their product-listing pages that indicates whether something is DRM-free or DRM-encumbered, and in the latter case, to link to a clear explanation of the restrictions imposed on that product.

Federal Trade Commission  
 August 5, 2016  
 Page 3 of 5

For example, here is the listing-detail for Amazon’s Kindle edition of John Scalzi’s new release from Tor Books, “The End of All Things,” which is a DRM-free ebook:

Product Details

File Size: 1469 KB  
 Print Length: 381 pages  
 Page Numbers Source ISBN: 1447290496  
 Publisher: Tor Books (August 11, 2015)  
 Publication Date: August 11, 2015  
 Sold by: Macmillan  
 Language: English  
 ASIN: B00SEPVPAW  
 Text-to-Speech: Enabled  
 X-Ray: Not Enabled  
 Word Wise: Not Enabled  
 Lending: Not Enabled  
 Enhanced Typesetting: Enabled

We would advocate adding a line about DRM between the serial number and “Text to Speech”:

Product Details

File Size: 1469 KB  
 Print Length: 381 pages  
 Page Numbers Source ISBN: 1447290496  
 Publisher: Tor Books (August 11, 2015)  
 Publication Date: August 11, 2015  
 Sold by: Macmillan  
 Language: English  
 ASIN: B00SEPVPAW  
**DRM: DRM-free**  
 Text-to-Speech: Enabled  
 X-Ray: Not Enabled  
 Word Wise: Not Enabled  
 Lending: Not Enabled  
 Enhanced Typesetting: Enabled

Here is the listing-detail for Amazon’s Kindle edition of Austin Grossman’s new release from Hachette, “Crooked,” which is encumbered by DRM:

Product Details

File Size: 580 KB  
 Print Length: 369 pages  
 Page Numbers Source ISBN: 031619851X  
 Publisher: Mulholland Books (July 28, 2015)  
 Publication Date: July 28, 2015

Federal Trade Commission  
August 5, 2016  
Page 4 of 5

Sold by: Hachette Book Group  
Language: English  
ASIN: B00P74VFUS  
Text-to-Speech: Enabled  
X-Ray: Not Enabled  
Word Wise: Enabled  
Lending: Not Enabled  
Enhanced Typesetting: Not Enabled

Here it is with DRM labeling:

Product Details

File Size: 580 KB  
Print Length: 369 pages  
Page Numbers Source ISBN: 031619851X  
Publisher: Mulholland Books (July 28, 2015)  
Publication Date: July 28, 2015  
Sold by: Hachette Book Group  
Language: English  
ASIN: B00P74VFUS  
**DRM: DRM restricted [LINK]**  
Text-to-Speech: Enabled  
X-Ray: Not Enabled  
Word Wise: Enabled  
Lending: Not Enabled  
Enhanced Typesetting: Not Enabled

Where the link would go to a plain-language list of all the activities restricted by the DRM.  
We hope that you will find these suggestions modest and reasonable, and welcome the chance to discuss them further with you.

Respectfully submitted,

/s/ Cory Doctorow  
Cory Doctorow  
Electronic Frontier Foundation  
cory@eff.org

Public Knowledge  
Free Software Foundation  
Consumer Federation of America  
Humble Bundle  
Baen Books  
McSweeney's

Weightless Books  
Make  
ECW Press  
No Starch Press  
Tachyon Books  
Kelly Link for Small Beer Press  
Eliot Peper, author of Uncommon Stock:  
Version 1.0 (FG Press, 2014)  
Joe Martin for Ragnarok Publications  
Emily Gould for Emily Books LLC  
Dan Simon, Seven Stories  
John Oakes, OR Books  
Andy Hunt, Pragmatic Bookshelf