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Buying a Lie: The Harms and Deceptions of Ghostwriting

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I. INTRODUCTION

Ghostwriting represents deception. A consumer buys a book by a favorite author, but that author did not produce it. A consumer buys the autobiography of a favorite public figure, hoping to understand that person's mind and get to know that person better, but the words and the story do not have the form that the famed public figure would have given them. Doctors prescribe medication with side effects that experts debate, ignorant that those favoring the medication received their ideas and their articles from the pharmaceutical company selling the medication. Testimony before Congress about the effects of tobacco advertising comes from a tobacco company puppet. A presidential candidate uses a book tour as a campaign tool and uses that book to prove a facility with words, logic, and intellectual pursuits that the candidate does not actually have. Perhaps on most days, ghostwriting only does economic harm to consumers who spend $9.95 plus tax on the latest paperback from a best-selling author who puts out six to ten books a year. On the worst days, though, it deceives voters, it deceives our policy makers, and it deceives those who help us make decisions about medicines.

Politicians,[1] celebrities,[2] professionals,[3] and even established authors[4] hire ghostwriters to do the heavy lifting of writing, and ghostwriters receive significant monetary compensation,[5] but they often receive no professional

1. Due to the unique nature of political ghostwriting, and ghostwriting in general, citations for it are limited.

2. Piper Weiss, *Snooki's Better Half: The Ghostwriter Behind "A Shore Thing"*, SHINE, (Jan. 6, 2011, 3:00 AM), http://shine.yahoo.com/channel/life/snookis-better-half-the-ghostwriter-behind-quot-a-shore-thing-quot-2437056/.

3. Jeff P. Scott, *Using a Ghostwriter for Profit*, EZINE ARTICLES, http://ezinearticles.com/?Using-a-Ghostwriter-for-Profit&id=5685327 (last visited Mar. 11, 2012).

4. Kerry Lengel, *Whodunit? Your Favorite Author May Be Just a Brand Name*, ARIZ. REPUBLIC, (Apr. 13, 2007, 12:00 AM), http://www.azcentral.com/ent/arts/articles/0413summerbooks0415.html.

5. Lynn Andriani, *Ghost Stories*, PUBLISHERS WEEKLY (May 26, 2006), http://www.publishersweekly.com/pw/print/20060529/17394-ghost-stories.html. However, some ghostwriters might dispute the significance of the pay. Julia Moskin, a cookbook ghostwriter, notes that ghostwriters such as herself often receive a flat rate or a percentage of an advance rather than royalties. Julia Moskin, *I Was a Cookbook Ghostwriter*, N.Y. TIMES, Mar. 14, 2012, at D1, *available at* http://www.nytimes.com/2012/03/14/dining/i-was-a-cookbook-ghostwriter.html.

credit for authoring works.[6] Publishers use ghostwriting to reap the financial benefit of marketing a book by a well-known name, even though that person has no talent for writing.[7]

When a ghostwriter remains anonymous and a publisher markets a book as written by a well-established name, consumers receive the message that the ideas and creative products in that book sprang from the mind of the purported author. Publishers and authors make this type of deception their goal.[8] Despite the transparently deceptive nature of the practice, it persists unimpeded by consumer protection laws. The continued practice of ghostwriting allows false representation of expertise and literary skill, and exploitation of the general public's interest in the lives and thoughts of celebrities.

The United States Supreme Court's decision in *Dastar Corporation v. Twentieth Century Fox Film Corporation*[9] provides some protection to the practice of ghostwriting. In *Dastar*, the Court declared that section 43(a) of the Lanham Act, which prohibits "false designations of origin,"[10] does not apply to the ideas contained within a work, but only to the physical object itself.[11] This decision effectively foreclosed the possibility of enforcing truthful marketing of written works based on claims of false designation of origin.[12]

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6. Kelly James-Enger, *How to Be a Successful Ghostwriter*, WRITERS DIGEST (June 7, 2011), http://www.writersdigest.com/writing-articles/by-writing-goal/get-published-sell-my-work/how-to-be-a-ghostwriter.

7. Andriani, *supra* note 5.

8. *See, e.g.*, Estate of Andrews v. United States, 850 F. Supp. 1279 (E.D. Va. 1994). Eugene Andrews, an executor of V.C. Andrews's estate, said as much in a letter to V.C. Andrews's literary agent, which read, in part, "When my sister died, and Andy Niederman [ghostwriter for Andrews after her death] stepped into our life, we both had something to offer. He, with his wonderful talent, and we, with a name that he could write under, has made Andy a wealthy man." *Id.* at 1285 (emphasis omitted). The other executor of Andrews's estate noted that royalty payments had decreased by 35% after "publicity disclosing that the books are ghost-written." *Id.* (emphasis omitted). His letter went on to state, "This suggests to me that people bought the earlier books you wrote because they thought Virginia wrote them . . . It also suggests something about relative contributions to success." *Id.* (emphasis omitted). One court found the deceptive nature of ghostwriting so apparent that it refused to enforce a ghostwriting contract as against public policy. Roddy-Eden v. Berle, 108 N.Y.S.2d 597 (N.Y. Sup. Ct. 1951). When Milton Berle desired to enter the literary field and garner recognition for having written a serious novel, he hired Anita Roddy-Eden to write the novel. After Roddy-Eden completed work on the novel, Berle decided not to publish it, which led Roddy-Eden to sue Berle for breach of contract. In dismissing Roddy-Eden's claim, the court emphasized that "agreements which tend to or have for their purpose to defraud the public generally, even though they may not amount to a criminal conspiracy, are illegal and void." *Id.* at 599.

9. 539 U.S. 23 (2003).

10. 15 U.S.C. § 1125(a) (2006).

11. 539 U.S. at 37.

12. Greg Lastowka, *The Trademark Function of Authorship*, 85 B.U. L. REV. 1171, 1210 (2005).

The practice of ghostwriting harms both individual consumers and society as a whole, and should be restricted so that non-authors do not receive credit for works, though such restriction must also not interfere with a true author's rights to anonymous and pseudonymous attribution. This note argues that ghostwriting, which has as its goal the deception of the consumer, should be subject to restriction as a form of false advertising. First, this note explores the background of ghostwriting, including a brief definition of the type of ghostwriting condemned. Second, the note explores problems inherent in the practice of ghostwriting, including the harms that the practice inflicts upon society. Finally, the note proposes a statutory solution to the problem of ghostwriting, attempting to strike a balance between the desired protection of consumers and the interests and rights of authors and publishers.

II. BACKGROUND

As a preliminary matter, this note discusses the nature of ghostwriting, with examples to provide an orientation into the practice, and then explores cases dealing with similar issues in order to demonstrate the possibility of ghostwriting claims. After describing the history of Lanham Act claims in the courts, the note turns to the current state of ghostwriting law under *Dastar*.

A. Ghostwriting Defined and Demonstrated

Ghostwriting has existed for as long as authorial attribution, which makes tracing the history of the practice impractical if not impossible.[13] Because ghostwriters work covertly, one cannot identify the origin of ghostwriting, despite knowing of many works that were ghostwritten. Reasonable people even disagree on the exact definition of ghostwriting, which leads to more ambiguity.[14] This note limits its definition of ghostwriting to the prac-

13. Did Homer write *The Odyssey*? Did William Shakespeare pen his own works? Did Moses write the Pentateuch? Did Plato write *The Republic*? Evidence of writers other than the attributed authors can be scarce, perhaps non-existent, when considering works from the ancient past. In the context of works of great religious or artistic significance, suggestions of ghostwriting might result in intense controversy, as well.

14. *See, e.g.*, Julie-Ann Amos, *Ghostwriting Exposed – The Top 50 Ghostwritten Books*, HUBPAGES, http://julieannamos.hubpages.com/hub/Ghostwriting-Exposed---The-Top-50-Ghostwritten-Books (last visited Mar. 11, 2012). Note that, among the fifty works listed, many are merely pseudonymous in nature. For instance, the author of the article asserts that Stephen King's works published as Richard Bachman are ghostwritten, while acknowledging that Bachman was a pseudonym for King. The author also notes works in the Hardy Boys and Nancy Drew series, which were written under corporate pseudonyms, as well as EC comics, in which the writers were simply not credited. It might merit noting that Julie-Ann Amos,

tice of intentionally deceiving readers by attributing authorship of a work to an actual person, living or dead, who did not write it. Pseudonyms, as fictional names used to protect the anonymity of the author, do not qualify.

Examples of ghostwriting demonstrate the pervasive practice of which this note disapproves. These examples also demonstrate the prominence of those who hire ghostwriters as well as some of the harms resulting from this practice.

V.C. Andrews wrote novels popular among teenagers and young women. Her rise to fame and popularity began with *Flowers in the Attic* in 1978.[15] Andrews continued to write and publish more novels in the "children in jeopardy" genre over the next several years, and these novels were met with great commercial success.[16] After her death in 1986, Andrews's publisher, agent, executor, and family discussed the possibility of using a ghostwriter to continue publishing novels under her name, eventually settling on Andrew Niederman as the ghostwriter.[17] Niederman's initial effort at ghostwriting for the deceased Andrews was also met with great commercial success, and more books were commissioned.[18] All the while, the books bore only Andrews's name. In fact, the publisher did not disclose Andrews's death until the fifth ghostwritten book in 1990; however, even this acknowledgment carried an air of deception:

> When Virginia became seriously ill while writing the Casteel series, she began to work even harder, hoping to finish as many stories as possible so that her fans could one day share them. Just before she died we promised ourselves that we would take all of these wonderful stories and make them available to her readers.[19]

Everyone involved attributed the success of the Niederman books to the name of V.C. Andrews.[20]

A rather prominent example of a politician's engaging in ghostwriting is John F. Kennedy's *Profiles in Courage*, for which he won a Pulitzer Prize.[21] While Kennedy and others involved insisted that he wrote the book, evidence points to Kennedy's speechwriter Ted Sorensen as the author, even though Kennedy developed some of the ideas and conducted some re-

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who compiled the cited list, works as a ghostwriter herself. Certainly, she might have some interest in ascribing greater respectability to the practice.

15. Estate of Andrews v. United States, 850 F. Supp. 1279, 1281 (E.D. Va. 1994).
16. *Id.*
17. *Id.* at 1283.
18. *Id.* at 1284.
19. *Id.* at 1284–85.
20. *Id.* at 1285.
21. Cecil Adams, *Did John F. Kennedy Really Write "Profiles in Courage?"*, THE STRAIGHT DOPE (Nov. 7, 2003), http://www.straightdope.com/columns/read/2478/did-john-f-kennedy-really-write-profiles-in-courage.

search.[22] One historian, Herbert Parmet, searched in vain for a manuscript written by Kennedy, and Parmet's research led him to conclude that the style of the book came from Sorensen.[23] Nevertheless, Kennedy received a Pulitzer Prize for a work that he, in all likelihood, did not actually write.

Author James Patterson had eight of the one hundred best-selling books of 2006, but co-authors write most of the material in Patterson's novels.[24] Other famous authors, including Clive Cussler and Tom Clancy, use ghostwriters to produce and sell more books.[25]

Snooki, famous as one of the stars of MTV's *Jersey Shore*, used a ghostwriter to produce her novel *A Shore Thing*.[26] While Snooki's ghostwriter has given interviews about her collaboration, only one name appears on the cover of the book.[27]

Ralph Schoenstein wrote *Fatherhood*, but attribution went to Bill Cosby.[28] Though Schoenstein was an established author in his own right, the book he wrote for Bill Cosby sold more copies than all of Schoenstein's other books combined.[29]

In addition to those mentioned above, this note discusses other examples of ghostwritten works where relevant. However, some ghostwriting practices exist for which specific examples remain elusive. When the practice is subject to concealment, this can hardly be surprising.

B. False Advertising Claims in Cases Resembling Ghostwriting

Courts have recognized false advertising claims related to authorial attribution prior to *Dastar*.[30] According to these courts, false attribution violated the Lanham Act.[31] The courts considered these claims to be instances of "'reverse passing off,' which occurs when a person removes or obliterates

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22. *Id.*
23. *Id.*
24. Lengel, *supra* note 4.
25. *Id.*
26. Weiss, *supra* note 2.
27. Product Listing for *A Shore Thing*, AMAZON.COM, http://www.amazon.com/ (search for "A Shore Thing") (last visited Mar. 11, 2012).
28. *Necrology – 1950s*, HAMILTON COLLEGE, http://www.hamilton.edu/magazine/spring07/departments/necrology/1950s (last visited Mar. 11, 2012).
29. *Id.*
30. *See* Smith v. Montoro, 648 F.2d 602, 605 (9th Cir. 1981); Follett v. New Am. Library, Inc., 497 F. Supp. 304 (S.D.N.Y. 1974); Geisel v. Poynter Prods. Inc., 283 F. Supp. 261 (S.D.N.Y. 1968).
31. *Smith*, 648 F.2d at 605; *Follett*, 497 F. Supp. at 313; *Geisel*, 283 F. Supp. at 268.

the original trademark, without authorization, before reselling goods produced by someone else."[32]

In one case, Ken Follett sued Arbor House Publishing ("Arbor House") for misrepresenting Follett's contribution to a book published in the United States as *The Gentlemen of 16 July*, a work translated from the original French version by Rene Louis Maurice (actually a pseudonym for three French authors) that Follett rearranged, rewrote, and otherwise edited to increase its readability.[33] After the initial publication of the book in England under the title *The Heist of the Century*, Follett gained his own fame for books such as *Triple* and *Eye of the Needle*.[34] When Arbor House sought to publish *The Gentlemen of 16 July*, they initially planned to place Follett's name prominently on the book's jacket, above the original author's name, although, for the book's previous release as *The Heist of the Century*, Follett received credit only on the title page of the book, beneath the name of the original author.[35] The court ultimately determined that, despite the unusually large contribution Follett made to the work, designating Follett as the principal author of the book would violate § 43 of the Lanham Act.[36]

In another case, Dr. Seuss sued a doll manufacturer because the dolls were based on illustrations that he had drawn before he gained fame as a children's book author.[37] The manufacturer represented the dolls as being "From the Wonderful World of Dr. Seuss," as well as carrying other markings that indicated an association with him.[38] Dr. Seuss moved for a preliminary injunction against them.[39] In granting the preliminary injunction, the court held that the plaintiff had demonstrated a reasonable probability of success on the Lanham Act claim, as "a 'false representation' that a product was authorized or approved by a particular person is actionable under Section 43(a)."[40]

Other cases have also demonstrated the courts' willingness to consider authorial attribution claims under the Lanham Act, even though the plain-

32. *Smith*, 648 F.2d at 605. *Smith* involved the misattribution of the plaintiff's work on a film to another actor. *Id.* at 603. The case is analogous somewhat to ghostwriting, but *Follett*, discussed fully *infra*, provides a much clearer analogy. *Follett*, 497 F. Supp. at 304. *Smith* serves as another demonstration of courts' willingness, pre-*Dastar*, to hear Lanham Act claims based on artistic or intellectual works.

33. *Follett*, 497 F. Supp. at 305–07.

34. *Id.* at 308.

35. *Id.* at 307–08.

36. *Id.* at 312–13.

37. Geisel v. Poynter Prods. Inc., 283 F. Supp. 261, 265 (S.D.N.Y. 1968).

38. *Id*. at 265.

39. *Id.* at 263.

40. *Id.* at 267–68.

tiffs have not always been successful.[41] These cases involve situations that bear a striking similarity to agreements between ghostwriters and putative authors. The difference between these cases and ghostwriting is the fact that ghostwriters explicitly authorize the removal of their names from the work they produce, and the putative authors explicitly authorize the use of their names in the sale of the work. The cases also involve some unwillingness by one party to have the disputed work credited as it had been. Despite this history of allowing such Lanham Act claims based on creative or communicative works, the Supreme Court may have closed off such claims in its decision in *Dastar*.

C. The Supreme Court's *Dastar* Decision and Its Impact on False Advertising Claims

In *Dastar*, the Supreme Court limited the definition and scope of § 43(a) claims relating to the "false designation of origin" provision.[42] Because this limitation shapes and limits the strategies available to combat ghostwriting, this subsection discusses the key elements of *Dastar*.

When Dastar Corporation published a video series entitled *World War II Campaigns in Europe* in 1995, it used footage from the original version of the 1949 television series *Crusade in Europe*, based on Dwight D. Eisenhower's book of the same name.[43] This footage entered the public domain in 1977, when Twentieth Century Fox ("Fox") failed to renew the copyright to the *Crusade in Europe* television series.[44] Fox reacquired the television rights to the book in 1988, and then it sold the video distribution rights to SFM Entertainment ("SFM") and New Line Home Video ("New Line").[45]

The Dastar videos used a substantial portion of the *Crusade in Europe* footage but removed all references to the book.[46] Dastar also created a new opening sequence, included a final closing, narrated chapter introductions, and changed other minor parts of the series.[47] Fox, SFM, and New Line sued Dastar, alleging, *inter alia*, that the copying of the *Crusade in Europe* footage constituted "reverse passing off" under § 43(a) of the Lanham Act, 15 U.S.C § 1125(a).[48] The trial court granted summary judgment to Fox, SFM,

41. *See, e.g.*, Cleary v. News Corp., 30 F.3d 1255 (9th Cir. 1994) (work was not a "bodily appropriation," and there was no "reverse passing off"); Rosenfeld v. W.B. Saunders, 728 F. Supp. 236 (S.D.N.Y. 1990) (preface mitigated consumer confusion, so injunctive relief denied).

42. 539 U.S. 23 (2003).

43. *Id*. at 25–27.

44. *Id*.

45. *Id.* at 26.

46. *Id*. at 27.

47. *Id.* at 26–27.

48. *Dastar*, 539 U.S. at 27–28.

and New Line on all counts.[49] The Ninth Circuit affirmed the Lanham Act claim, but the Supreme Court ultimately reversed that decision and remanded to the circuit court.[50]

1. *The Relevant Holdings of* Dastar

Writing for the *Dastar* majority, Justice Scalia limited the protection of § 43(a) to the identification of the producer of physical goods.[51] The Court acknowledged the fact that purchasers might have different concerns apart from who produced the physical product in situations involving a communicative product, "one that is valued not primarily for its physical qualities, such as a hammer, but for the intellectual content that it conveys, such as a book," but ultimately determined that extending § 43(a) to cover designations of authorship in those situations would cause a conflict with copyright law.[52] The Court specifically worried about "creat[ing] a species of mutant copyright law" that would limit the right of the public to copy and use public domain works.[53]

While the Court narrowly limited the scope of § 43(a), the limitation had a very specific purpose of not bringing trademark law into the realm of copyright law.[54] The Court focused on the problems created by uncopyrighted works in applying § 43(a).[55] Nevertheless, *Dastar* established the origin of the physical good as the limitation of § 43(a).[56] With no other law generally prohibiting plagiarism or misattribution,[57] this has led to the concern that the Court has denied authors and the public sufficient protection concerning the proper attribution of works.[58]

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49. *Id*.
50. *Id.* at 28, 38.
51. *Id*. at 37.
52. *Id.* at 33.
53. *Id.* at 34.
54. *Dastar*, 539 U.S. at 37.
55. *Id.* at 35. ("Reading 'origin' in § 43(a) to require attribution of uncopyrighted materials would pose serious practical problems.").
56. *Id.* at 37. The Court specifically referred to the actual videocassettes in *Dastar* as the products falling under the Lanham Act's "origin of goods" provision. *Id.* at 31. This would mean that the Lanham Act would apply only to the physical aspects of a book (i.e., the paper, ink, cover, and binding). This might cause one to question the ultimate limitations of the *Dastar* holding if taken to extremes. Could any author remove the name of William Shakespeare from a copy of the bard's complete works, affix his own name, and sell to undiscerning consumers as his own?
57. Lastowka, *supra* note 12, at 1211.
58. Laura A. Heymann, *The Birth of the Authornym: Authorship, Pseudonymity, and Trademark Law*, 80 NOTRE DAME L. REV. 1377, 1378 (2005). "[T]he Supreme Court [has] largely denied authors the ability to compel attribution of their works . . . and thus denied readers the accurate attribution required for organized and efficient literary consumption." *Id.*

2. *The Subsequent Impact of* Dastar

Since the *Dastar* decision, courts have consistently limited § 43(a) claims to those involving tangible products.[59] While the possibility exists that Lanham Act claims might succeed against those engaged in the practice of ghostwriting, there is no case law on this point. A case applying *Dastar* to creative works has not, as of this writing, made it to the Second Circuit Court of Appeals. The Eighth Circuit has yet to rely on *Dastar* at all. This suggests, perhaps, that courts have not spoken the final word on *Dastar's* application. Even so, no law currently restricts the practice of ghostwriting.

III. THE HARMS OF GHOSTWRITING

Ghostwriting inflicts greater harms on society than one might initially believe. While this idea might seem extreme on its face, ghostwriting, especially in the context of medical research and journals, might actually have fatal consequences.[60] Although such extreme consequences will not normally result from ghostwriting, lesser harms routinely accrue.

By far, the most common harm of ghostwriting is deception of the consumer. Extreme dangers, such as a potential loss of human lives, can result when ghostwritten works influence public and legislative policy.[61] An equally public but less invidious harm occurs when politicians use ghostwritten works as campaign materials and credentials for public office.[62] In the literary world, ghostwriting can negatively impact the chance of discovering new talents and the ability of writers to gain recognition for their own work.[63] Finally, ghostwriting causes harm in professional contexts, creating ethical problems for lawyers and allowing other professionals to falsely present themselves as having expertise.[64] These various harms are discussed below.

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59. Lastowka, *supra* note 12, at 1204, 1209 n.188 (listing a number of cases demonstrating the courts' understanding of *Dastar's* limitation of § 43(a) claims). *See also* Remark LLC v. Adell Broad., 817 F. Supp. 2d 990 (E.D. Mich. 2011); Marvel Worldwide, Inc. v. Kirby, 756 F. Supp. 2d 461, 473–74 (S.D.N.Y. 2010).

60. The circumstances that would produce such a result rarely occur, but ghostwriting has played a part in informing the medical community about the effects of certain drugs, which can lead to fatal consequences. This note discusses specific examples of ghostwriting that can have such results in Part III.B, *infra*.

61. *See* discussion *infra* Part III.B.

62. *See* discussion *infra* Part III.C.

63. *See* discussion *infra* Part III.D.1.

64. *See* discussion *infra* Part III.D.2.

A. Ghostwriting Deceives Consumers

Author names greatly influence consumers.[65] The estate of V.C. Andrews and her publishers certainly found value in her name, such that they hired Andrew Niederman to continue writing books as V.C. Andrews after her death.[66] In fact, Andrews's name had such value as to make it a taxable asset, the exact value of which became the subject of litigation.[67] Similarly, Dr. Seuss's name had so much value that manufacturers of stuffed dolls used it in marketing toys based on artwork he created.[68] The name of Ken Follett also had sufficient value that the owners of the copyright to a book Follett translated and edited attempted to represent him as the author of the book.[69]

In each of these instances, there existed the goal of using a name to attract buyers to a product based on the purported involvement of a particular creator. Yet, in the cases of Dr. Seuss and Ken Follett, such representations resulted in court actions to enjoin such advertising.[70] In the instance of Niederman's ghostwriting for V.C. Andrews, no such action resulted because Andrews's estate and publisher hired him, and because, of course, V.C. Andrews had already died.[71] While one cannot argue that Andrews or her estate suffered any harm from the use of her name, consumers suffered equally in all three of these cases.

Consumers suffer harm from ghostwriting because they cannot trust the name of the author of a book to indicate the quality of the work.[72] Greg Lastowka makes the point that authorial attribution gives consumers valuable information and "reduc[es] the costs of searching for creative content."[73] One need only consider the associations brought on by the names of Tom Clancy, John Grisham, or J.R.R. Tolkien to understand what sort of information an author's name can convey. When a consumer sees one of those names on the cover of a book, that consumer can quickly understand that the book deals with espionage and intrigue, legal fiction, or works of high fantasy. The consumer also develops an association between the name and quality of the work.[74] Ghostwriting can lead to consumer disappointment on this

65. *See* Heymann, *supra* note 58, at 1420; Lastowka, *supra* note 12, at 1179–80.
66. Estate of Andrews v. United States, 850 F. Supp. 1279, 1283 (E.D. Va. 1994).
67. *Id.* at 1281.
68. Geisel v. Poynter Prods. Inc., 283 F. Supp. 261, 265 (S.D.N.Y. 1968).
69. Follett v. New Am. Library, 497 F. Supp. 304, 307–08 (S.D.N.Y. 1980).
70. *Id.* at 313; *Geisel*, 283 F. Supp. at 268.
71. *Estate of Andrews*, 850 F. Supp. at 1283.
72. Lastowka, *supra* note 12, at 1222–23.
73. Lastowka, *supra* note 12, at 1179.
74. *Id.* at 1223.

count, as a ghostwriter may not achieve the same level of quality that consumers customarily expect from the named author.[75]

Whether or not the ghostwriter manages to achieve success in emulating a particular famed author's style or producing a quality work, consumers still suffer harm because they purchased a book believing it to contain the named author's ideas and words.[76] The attachment of an author's name to a work assures the consumer that the work sprang from that author's mind.[77] "Ghostwriting, which might seem to challenge the autonomy of the speaking subject, routinely magnifies the presence of the autonomous speaker who is simulated before us."[78] If ghostwriters received proper acknowledgment for their contributions, consumers would not create false associations between the names of authors and the content of works in a manner that leads to confusion and deception.

B. Ghostwriting Influences Public Policy

Businesses and other interested parties use ghostwriting to lend credibility to their own self-interests.[79] When businesses use ghostwriting to covertly produce scholarly works that support their public policy preferences,

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75. *Id.* at 1224 & nn.258–259 (citing customer reviews of Tom Clancy's *Op-Center: Line of Control* that express feelings of disappointment in the quality of the book and deception in the marketing of the book in that the consumer believed Clancy to be the actual writer).

76. *Id.* at 1223–24.

77. *Id.* at 1221 (noting that "authorial attribution . . . often points directly to a particular and relevant factual proposition about the circumstances of production and the qualities of a product").

78. Thomas W. Benson, *"To Lend a Hand": Gerald R. Ford, Watergate, and the White House Speechwriters*, RHETORIC & PUB. AFF., Summer 1998, at 201, 220, *available at* http://muse.jhu.edu/journals/rap/summary/v001/1.2.benson.html. Although Benson discusses ghostwriting in the context of presidential speeches, his analysis of the rhetorical effect of ghostwriting has persuasive value in all of its contexts. This note makes no judgment regarding ghostwriting of political speeches, though such ghostwriting might fall within the same logical scheme, particularly in regard to arguments made *infra* Part III.C. The author of this note, however, makes no attempt to extend the arguments of this note that far, as one might well consider the relationship between speechwriter and speaker as more analogous to the relationship between playwright and actor than as an actual deception. One who makes a speech does, at the very least, publicly perform the speech and thus professes ownership of the words in that manner.

79. *See, e.g.*, R.M. Davis, *British American Tobacco Ghostwrote Reports on Tobacco Advertising Bans by the International Advertising Association and JJ Boddewyn*, 17 TOBACCO CONTROL 211 (2008), *available at* http://www.jstor.org/discover/10.2307/20208420?uid=3739256&uid=2129&uid=2&uid=70&uid=4&sid=21101160062401, and discussion, *infra*.

such materials substantially impact legislative and policy decisions when introduced as evidence before legislative bodies.[80]

Tobacco companies and pharmaceutical companies have used ghostwritten works to assuage public fears about the dangers posed by their products.[81] One Arkansas woman's struggle with breast cancer demonstrates that terrible harms can result from pharmaceutical companies' use of ghostwriting.[82] Donna Scroggin used combination hormone replacement therapy to treat symptoms of her menopause.[83] The FDA found that this common treatment increases the risk of certain types of cancer.[84] Wyeth Pharmaceuticals, Inc. responded to these studies with a variety of measures to mitigate their effect on sales of their hormone replacement products.[85] Among these measures, Wyeth produced a ghostwritten paper questioning the link between progestins, such as those used by Ms. Scroggin, and breast cancer that other authors cited with no knowledge of Wyeth's involvement.[86] Ms. Scroggin and her doctor did not have sufficient warning of the risks of using the hormone replacements because the warning labels did not convey a significant increase in the risk of cancer.[87] Ms. Scroggin developed breast cancer, then had a double mastectomy and ended her hormone replacement therapy.[88]

While Wyeth used many tactics to avoid acknowledging a link between its products and cancer, the case demonstrates that the practice of ghostwriting produces works that are absorbed into medical literature and have an effect on the public policies concerning drugs and the frequency with which doctors prescribe them. While companies must have a right to publicly defend their products and publish responsive works and studies, doing so covertly subverts the healthy skepticism that academic and scientific works must encounter to promote the care and health of patients.

Further instances of ghostwritten works finding their way into the dialogue of public policy exist in the realm of tobacco legislation. In *United States v. Phillip Morris USA, Inc.*, the United States offered evidence of ghostwriting by tobacco companies for the purpose of refuting the negative

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80. *See id.*

81. *See In re* Prempro Prods. Liab. Litig., 586 F.3d 547, 557 (8th Cir. 2009); *see generally* Davis, *supra* note 79.

82. *See generally In re* Prempro Prods. Liab. Litig., 586 F.3d 547.

83. *Id.* at 553.

84. *Id.* at 554–55.

85. *Id.* at 555–58.

86. *Id.* at 557.

87. *Id.* at 564–65.

88. *In re* Prempro Prods., 586 F.3d at 553–54.

health effects of smoking.[89] The defendants' own witness conceded on cross-examination that R.J. Reynolds and Phillip Morris had probably engaged in such ghostwriting.[90] The United States took pains to establish that medical and scientific writers consider the practice of ghostwriting harmful to scientific discourse, as the viewpoint of a company promoting a drug or product gains the appearance of established fact as opposed to the opinion of the manufacturer.[91] R.M. Davis describes the efforts of British American Tobacco in using ghostwritten articles to further the interests of the tobacco industry.[92] Davis describes how J.J. Boddewyn published studies on the effects of tobacco advertising regulations under his name, though an employee of British American Tobacco, Paul Bingham, actually wrote the studies.[93] These studies made their way into Boddewyn's testimony before the House of Representatives in hearings in 1986, 1987, and 1989.[94]

When ghostwriting enters the public body of knowledge on a subject, bias without accountability lurks within the shadows. Lawmakers must deal with the issues in front of them without the transparency that comes from knowing the source of the information. Ghostwriting harms the ideal of impartiality in scientific literature, and ghostwriting may remain concealed for years or even decades after it matters.[95] Society and legislators need transparency and honesty in order to make informed decisions on law and policy. Ghostwriting allows interested parties to obfuscate their manipulations, creating an unreliable, biased body of knowledge. This ultimately prevents the development of laws and regulations that people would otherwise find necessary, or leads to legislators using faulty data to create laws favoring one group over others.[96]

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89. United States' Opposition to Joint Defendants' Motion for Judicial Notice re Ghostwriting at 1-2, United States v. Philip Morris USA Inc., 793 F. Supp. 2d 164 (D.D.C. 2011) (No. 99-CV-02496), 2005 WL 3560943.

90. *Id.*

91. *Id.* at 9–13.

92. Davis, *supra* note 79, at 211.

93. *Id.* at 211–12.

94. *Id.* at 212.

95. *Id.* at 214 (mentioning that the revelation of ghostwriting in the reports by Boddweyn was not discovered for "more than two decades").

96. *Id.* at 212–13 (Boddewyn's testimony before the House of Representatives mentioned flaws in the study described). The testimony that was presented to the House of Representatives was meant to help determine the need for tobacco advertising bans. The reports ghostwritten for Boddewyn suggested that such bans were not useful. The ghostwritten reports thereby provided an advantage to the tobacco industry and a disadvantage to proponents of tobacco advertising bans.

C. Ghostwriting Affects Elections

Political figures often use a published book as a campaign tool.[97] The claim of authorship allows someone seeking political office to claim great intelligence and facility with words, traits that the public would find desirable in an elected official.[98] Through the facilitation of those claims, ghostwriting can deceive voters about a candidate's qualifications and contribute to the election of a candidate based on false credentials.

President Barack Obama's rise to office and his book *Dreams of My Father* provide an excellent example for the discussion of this potential. *Dreams of My Father* has received wide recognition as an excellent literary work.[99] Some have accused the President of using a ghostwriter for the book, however, and they have identified that ghostwriter as Bill Ayers.[100] The truth of such allegations lies beyond the scope of this note, but the implication of either truth or falsity demonstrates the desirability of eliminating ghostwriting in the political arena.

If the accusations that Bill Ayers ghostwrote *Dreams of My Father* have any truth, the public could rightfully feel deceived by President Obama's claims of authorship of a book that has received so much praise. Indeed, considering the accusations and controversy surrounding President

97. *See* Craig Fehrman, *Ghostwriting and the political book culture*, L.A. TIMES (May 23, 2010), http://articles.latimes.com/2010/may/23/opinion/la-oe-fehrman-ghost-20100523.

98. *See* Rob Woodard, *Presidents who write well, lead well*, THE GUARDIAN BOOKS BLOG (Nov. 5, 2008, 6:51 A.M.), http://www.guardian.co.uk/books/booksblog/2008/nov/05/obama-writer-dreams-from-my-father.

99. *See id.*; Michiko Kakutani, *From Books, New President Found Voice*, N.Y. TIMES, Jan. 19, 2009, at A1, *available at* http://www.nytimes.com/2009/01/19/books/19read.html?_r=1&hp (describing the book as "the most evocative, lyrical and candid autobiography written by a future president"). One might argue that the perception of the quality of *Dreams of My Father* grew out of President Obama's own public charisma, which would suggest that the book had a negligible effect on his candidacy. This note assumes, *arguendo*, that the opinions of the book derive from the book itself and not perceptions of President Obama's personal magnetism. Even if President Obama's own charisma did influence opinions of the book, the ghostwriting of *Dreams of My Father* would still constitute a market deception on the consumer, changing the nature of the harm, but not its existence.

100. *See, e.g.*, Jack Cashill, *Who Wrote Dreams of My Father?*, AMERICAN THINKER (Oct. 9, 2008), http://www.americanthinker.com/2008/10/who_wrote_dreams_from_my_fathe_1.html; Mara Gay, *Donald Trump Claims Obama's 'Dreams of My Father' Ghost Written by Bill Ayers*, AOLNEWS (Mar. 31, 2011), http://www.aolnews.com/2011/03/31/donald-trump-claims-obamas-dreams-of-my-father-ghostwritten/.

Obama's alleged association with Bill Ayers,[101] voters might have found such information alarming or, at the very least, worthy of note.

On the other hand, if the claims have no merit, the practice of ghostwriting has, by its very existence, allowed a smear against President Obama's reputation. Accusers would practice greater care in making accusations of an illegal activity, as opposed to accusations that a person has engaged in lawful, disfavored conduct. A politician would have greater power to deny the use of ghostwriters, as well. Currently, a politician who uses a ghostwriter can legally conceal that relationship, and contractual provisions might even require concealment.[102] A politician can do very little to effectively deny the use of a ghostwriter if a contract requires such a denial.[103] In fact, with the rampant use of ghostwriters by politicians,[104] ghostwriting can become a presumption. Illegalizing ghostwriting would shift the presumption away from their use and toward an absence of ghostwriter involvement in a politician's work.

D. Ghostwriting Causes Other Harms to Society

Aside from the previously mentioned harms that ghostwriting visits upon society, there are other harms and considerations that merit a brief mention. The effect that ghostwriting has on the actual market for written works and the impact of ghostwriting in professional contexts further illustrate that ghostwriting requires remedy.

1. *Ghostwriting Reduces Opportunities for Writers*

While ghostwriting can prove a lucrative career, it also serves to fill the market with books by celebrities, politicians, and others whose profiles are greater than that of any new writer trying to break in.[105] Even if professional

101. Scott Shane, *Obama and '60s Bomber: A Look Into Crossed Paths*, N.Y. TIMES, Oct. 4, 2008, at A1, *available at* http://www.nytimes.com/2008/10/04/us/politics/04ayers.html; Ben Smith, *Obama once visited '60s radicals*, POLITICO.COM (Feb. 22, 2008, 1:09 A.M.), http://www.politico.com/news/stories/0208/8630.html.

102. Lastowka, *supra* note 12, at 1221–22 (discussing the arrangement of compensation for lack of credit); James-Enger, *supra* note 6 (noting that ghostwriters' clients often require confidentiality agreements).

103. Denying the use of a ghostwriter in this context would meet the expectations of the accuser, of course. Any person bound by a confidentiality agreement could not address the issue without breaching the contract. If the accuser believes the accused bound to a contract requiring a denial, the accusation is affirmed no matter how the accused responds.

104. Fehrman, *supra* note 97.

105. *See* Andriani, *supra* note 5; Claudia Suzanne, *The Good Life of Ghostwriting*, WRITERS WEEKLY (Oct. 3, 2001), http://writersweekly.com/this_weeks_article/000607_10032001.html (estimating that 50% or more of traditionally published books use a ghostwriter).

ghostwriters have no complaints about their work,[106] non-disclosure agreements and the requirement of anonymity mean that ghostwriters do not develop any sort of reputation that might enhance their own writing careers or increase the marketability of their work. Quite simply, ghostwriting reduces the risks for publishers and closes off opportunities for writers to earn their own fame and recognition.[107] The lack of recognition can demoralize ghostwriters who might spend an inordinate amount of time and effort creating a book for a celebrity.[108]

Even if many writers might simply desire to write for a living regardless of whether or not they receive any credit for the work, the practice of ghostwriting puts a ceiling on success. A book ghostwritten for a major celebrity will still receive prominent display in a bookstore or online retailer no matter the level of brilliance of the actual writing. Even absent a market filled by celebrity books, a writer would have to demonstrate tremendous talent[109] to receive as prominent a display as any given to a reality television star.

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106. *See* James Chartrand, *Is Ghostwriting Ethical? The Debate Continues*, MEN WITH PENS, http://menwithpens.ca/is-ghostwriting-ethical-the-debate-continues/ (last visited Mar. 11, 2012).

107. Ghostwriting might also serve to stifle actual creativity and artistic advancement by relegating original, brilliant works to an author's computer, while at the same time flooding the market with by-the-numbers romance novels, espionage thrillers, and memoirs or "autobiographies" of politicians and reality television stars. While there is certainly a place for these types of works, and a market for them, we must consider whether we should encourage the growth of the body of such works at the risk of losing the next book to rise to the level of *To Kill a Mockingbird* or *Moby Dick*, or the next author who could fill the shoes of Hemingway or Faulkner.

108. Moskin, *supra* note 5. Julia Moskin describes low points in her career such as taking dictation while a celebrity chef received a pedicure, having her named removed from the cover of a cookbook because the chef said "it would hurt his wife's feelings," and spending two days under armed guard in Bogota while a chef explored the countryside. *Id.*

109. Admittedly, luck and finding the right market can have as significant, or perhaps even more significant, an effect as talent. This note argues for increased honesty in work with the hope that increased quality will follow. However, this note also takes the position that, for the consumer, it is better for inartistic drivel to find success when honestly attributed than for a brilliant work to have success under the name of a person who had no hand in its production.

2. *Ghostwriting Causes Deception in Professional Environments*

Publishing aside, there are other industries and harms in professional environments that derive from ghostwriting. There is a controversy in the legal profession about ghostwriting for *pro se* litigants.[110] Some professionals also use ghostwriters to produce books to establish themselves as experts in new fields in order to facilitate career changes.[111]

a. Lawyers Ghostwriting for *Pro Se* Litigants

One might observe that lawyers and judges often engage in what some might consider ghostwriting. After all, many briefs and memorandums have a lawyer's name signed to them, while the actual composition was performed by a clerk.[112] However, this sort of writing is not ghostwriting. When a judge or attorney puts his name to a writing prepared by a clerk, he is certifying that he approves of the document and the message it contains.[113] Neither the judge nor the attorney attempts to solicit someone to buy the document through the assertion of authorship. Furthermore, such a division of labor is done in order to increase efficiency, not to deceive anyone.[114] The name on a brief or memorandum ultimately conveys the message, not that every word was composed by the signee, but that the words have been approved and that the signee takes responsibility for the accuracy of that writing.

The lack of such accountability is problematic when a lawyer ghostwrites for a *pro se* litigant.[115] Courts have decried the practice because the lawyer who does so "escapes the professional, ethical, and substantive obligations imposed on members of the bar."[116] There is debate about this particular topic, and it invokes ethical rules and procedural concerns unique to

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110. *See, e.g.*, Jeffrey P. Justman, Note, *Capturing the Ghost: Expanding Federal Rule of Civil Procedure 11 to Solve Procedural Concerns with Ghostwriting*, 92 MINN. L. REV. 1246 (2008).

111. Derek Daniels, *Ghostwriting - The Publishing Industry's Best-Kept Secret!*, OFSPIRIT.COM, http://www.ofspirit.com/interviews-ghostwriting.htm (last visited Mar. 11, 2012).

112. *See, e.g.*, Heymann, *supra* note 58, at 1408 (discussing the use of clerks by judges).

113. FED. R. CIV. P. 11, for example, requires that a lawyer sign documents filed with the court and certify the document as to its contents, but not as to its authorship.

114. *See id.*

115. Justman, *supra* note 110, at 1248.

116. *In re* Mungo, 305 B.R. 762, 767 (Bankr. D. S.C. 2003).

lawyers that lie beyond the scope of this note.[117] In considering ghostwriting generally, however, the practice impacts the legal community, even if the implications are different.

b. Professionals Representing Themselves as Experts

When trying to make a career change, some people seek a competitive advantage by writing a book, establishing themselves as experts in a new field.[118] Rather than actually writing that book, however, the person may hire a ghostwriter to gain the appearance of expertise without having to conduct the necessary research required to earn that appearance.[119]

Specific examples of this practice are difficult to find, as such career-changers might not have the notoriety of a celebrity or politician using a book as a publicity tool. The best proof of this lies in interviews with ghostwriters who, while not naming their clients, reveal the type of work that they have done.[120] This practice allows those who can afford to hire ghostwriters to misrepresent themselves as authorities to new employers, granting them an advantage that honest applicants or those who cannot afford the price of a ghostwriter do not have. This practice essentially rewards the dishonest in exactly the same fashion as falsifying a résumé or job application.

IV. SOLUTION

Legislators need to solve the significant problems that ghostwriting creates. After *Dastar*, the use of the Lanham Act to stop ghostwriting is unlikely at best.[121] With no other alternatives to curb the practice, the solution

117. *See, e.g.*, Justman, *supra* note 110. Justman's note provides a summary of the debate about this particular practice and serves as a good starting point for those with an interest in further reading on this topic.

118. James-Enger, *supra* note 6.

119. *Id.*

120. Daniels, *supra* note 111 (describing in an interview a ghostwriting job for a woman who wished to transition from corporate consultant to personal coach).

121. A narrow interpretation of *Dastar* might solve the problem and allow the use of the Lanham Act, but this would require a very narrow construal of the decision, in addition to finding a party with standing and bringing suit in a jurisdiction that had not already broadly construed *Dastar*. Many jurisdictions have already construed *Dastar* so broadly as to prevent a claim. *See, e.g.*, Zyla v. Wadsworth, Div. of Thomson Corp., 360 F.3d 243, 251–52 (1st Cir. 2004) (holding that there is no § 43(a)(1)(A) claim for failure to acknowledge a co-author's contribution to a book). Furthermore, while the use of other subsections of § 43(a) might have provided a work-around for the problem (such as asserting that a false representation of authorship "misrepresents the nature . . . or association of such person . . . or as to the origin, sponsorship, or approval of . . . goods" under § 43(a)(1)(B)), Greg Lastowka points out that many "courts have spoken broadly about § 43(a) and *Dastar's* tangibility limitations." Lastowka, *supra* note 12, at 1209.

must lie outside the judicial system and within the realm of legislation. This section proposes a statutory solution to the problem of ghostwriting.

Any statutory solution must be narrow so that it does not interfere with the rights of authors to control the attribution of their work.[122] The First Amendment protects both pseudonymous and anonymous speech.[123] Other common practices in the publishing industry might require consideration as well. Shared pseudonyms and corporate works do not implicate the same concerns as ghostwriting.[124]

For these reasons, a statutory restriction on ghostwriting should only restrict false attribution to an actual person, living or dead. The statute should include an explicit allowance for the use of fictional names. The statute should not limit anonymous attribution, except that anonymity might require an explicit statement when the anonymous author collaborates with another putative author.[125] The restriction might require disclosure of the capacity in which each contributor served, in much the same way movie credits give proper attribution to those who contribute to a film's production.

A model federal statutory restriction of ghostwriting should read as follows:

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122. *See* Heymann, *supra* note 58, at 1377–78. Heymann describes the idea of an "authornym," a concept of authors deciding on how to attribute their works based on branding decisions. *Id.* This freedom allows authors to decide how to present their works to the public, and ultimately serves something of a trademark function. This author finds no inconsistency between honest attribution and choice of attribution, and, thus, no inconsistency in requiring that ghostwriters reveal their involvement while still allowing authors to make other choices regarding what might be "false" attributions that are, nevertheless, honest in the information they convey to the consumer.

123. *Id.* at 1427–28.

124. *See* Amos, *supra* note 14; James D. Keeline, *Stratemeyer Syndicate pseudonyms: Bobbsey Twins, Tom Swift, Hardy Boys, Nancy Drew*, TRUSSEL.COM, http://www.trussel.com/books/strat.htm (last visited Oct. 29, 2012). The books in the Nancy Drew series were all attributed to Carolyn Keene, for instance, but not only is Carolyn Keene a pseudonym, it is a pseudonym for more than one author. This sort of practice might skirt close to the line between acceptable practices and deceptive ones, but one can presume tight editorial control over such a corporate book series or a licensed novel (such as *Star Wars*, *Star Trek*, *Transformers*, or *X-Men* novels) that the concerns about qualitative misrepresentation are less compelling. Indeed, in the context of licensed or series works, Justice Scalia's assertion that consumers care more about the content of a work than the ostensible creator might apply to even creative works as much as physical goods. *See* Dastar Corp. v. Twentieth Century Fox Film Corp., 539 U.S. 23, 32–33 (2003).

125. Such allowances would not defeat the ultimate purpose of the statute, which is to prevent deception as to the contribution of the putative author. If a book listed its author as "Anonymous from an idea by Snooki," the purpose of preventing the deception that Snooki actually wrote the book would still be served, and consumers would not be led to believe that she had actually produced the entire creative work unaided.

The purpose of this Act is to ensure that attribution of authorship shall not be made in such a manner as to have the effect of concealing the contribution of the primary author of a written work and misrepresenting in proportion the contribution of any other author as being greater or more significant than such contribution might actually have been.

(A) No person shall produce, sell, or use the instrumentalities of interstate commerce to distribute any written work in which the credited author is

(i) identifiable as an actual person, living or dead, and

(ii) who did not write, draft, produce, or otherwise substantially contribute to the content and character of the work.

(B) Any written work published and distributed through the instrumentalities of interstate commerce shall identify the actual author of any work in at least equal prominence to and preceding any celebrity, public figure, or other person who sponsored, conceived of, endorsed, authorized, or otherwise uses or authorizes the use of his identity in the promotion of that work, where that person could not receive credit as an author under section (A) of this statute ("endorser"). Such an endorser may not receive credit identifying that person as the author of the work but may receive credit for contributions with appropriate disclosing language in accordance with the following designation guidelines:

(i) "with," "and," or similar conjunctive identifiers where the primary author and the endorser shared equally or nearly equally in the responsibilities and production of the work;

(ii) "from an idea by" or similar identifier where the endorser provides initial thoughts, outlines, or other initial creative matter from which the primary author produces the written work;

(iii) "with contributions from" or similar identifier where the endorser provides information or input used by the primary author in producing the finished work;

(iv) "authorized by" or similar identifier where the endorser has insignificant involvement in the actual production of the work; or

(v) "in the style of" or similar identifier where the endorser is an author but has made no significant contribution to the particular work.

(C) In addition to an author's legal name, the following shall also satisfy the attribution requirements of this statute:

> (i) the designation "Anonymous" or other similar identifier that indicates an author's wish to remain unknown;
>
> (ii) the name of a corporation, business, partnership, or other legal entity; or
>
> (iii) fictional names or pseudonyms used to identify one or more people.
>
> (iv) There shall be no requirement to list, credit, or identify as "Anonymous" any author, endorser, or other contributor to the content of a written work when all such parties agree and the work has no designation by which an author, endorser, or other contributor could be identified as the author of the work.

Congress should use its Commerce Clause[126] authority to enact this statute. The statement of purpose and section A of the sample legislation state the substantive ideas of the legislation. This provision bans the sale and distribution of works that purport to be written by someone who did not actually write them. This language would be sufficient to solve the problems that ghostwriting causes, as even academic and medical journals would be subject to it. However, this language is too broad alone, and could forbid some practices aside from the ghostwriting that this note targets.

Section B alleviates one of these problems. Publishers desire the publicity and profits that they receive through marketing a book through its connection with a celebrity. Additionally, the many ghostwriters at work now might desire to continue their relationships with their prominent clients. For this reason, section B provides for such an allowance. In doing so, the statute can ensure that consumers get accurate information about the product they purchase, while publishers and celebrities can still enter into the lucrative arrangements that make such relationships so desirable. As another benefit, the actual writers of the works receive recognition of their efforts, which could potentially lead them to more success and additional work. The example identifiers allow for additional credit to the celebrity or public figure that makes significant contributions to the work, which might encourage greater involvement from that person in the production of the work that the person endorsed. While the identifiers are samples, most works would not require anything significantly different. Nevertheless, the statute should have some flexibility in order to allow creative attributions or additional descriptions.[127]

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126. U.S. CONST. art. I, § 8, cl. 3.

127. A publisher might wish to identify a novel such as those written by Niederman for the V.C. Andrews estate as "in the tradition of" or "from the world of." A horror novel from an idea by a celebrity might be styled as "from a bone-chilling idea by" or "from the demented mind of." The purpose of the statute is to promote transparency and honesty, not to stifle creativity.

Section C's purpose is to provide allowance for pseudonymous and anonymous writing. Without such a provision, the statute might not survive a constitutional challenge because the statute could restrict protected forms of speech.[128] Section C also makes allowances for corporate authorship as a matter of convenience. Corporate authorship, as previously stated, does not create the sort of problems that most ghostwriting creates.[129] Additionally, the statute's requiring credit to be attributed to many particular authors who may have made small contributions to an aggregate product would unnecessarily burden businesses without any true benefit to consumers. Section C concludes by allowing a complete absence of attribution where no one involved in the creation of the work wishes to reveal his identity.

The passage of such legislation would eliminate ghostwriting to a large extent, while still allowing authors significant freedom in their choice of attribution. While the ability of a plaintiff or the government to prove a violation of the statute might be elusive, ghostwriting agencies, at the very least, could not operate as they currently do. Such legislation would protect consumers who wish to buy books and other written works that are written by the credited author, protect our political processes by preventing politicians from using the writing skills of others to demonstrate their fitness for office, and help prevent special interest groups from influencing the legislative process through the covert use of studies paid for by those groups.

V. CONCLUSION

When people read ghostwritten works, they buy a lie. Consumers buy the lie that the credited author wrote the book they bought. Doctors buy the lie that they can trust the impartiality of drug research. Our legislators buy the lie that testimony and evidence used in making policy decisions is trustworthy. Voters buy the lie that the rhetoric in a candidate's book shows the thought processes of a statesman. Despite the disdain for deception that most people feel, these particular lies have slipped past consumer protection laws, and ghostwriters, their publishers, and their patrons continue to sell them.

Currently, no legislation exists to stop these lies from reaching both the literal marketplace and the marketplace of ideas. No reason exists to justify the continued deception of the public through ghostwriting. Consumers need honesty in marketing. Doctors need honest research when making treatment choices. Legislators need honest information in making policy decisions. Voters need honesty when electing their leaders. No one needs to lie just to sell books.

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128. Heymann, *supra* note 58, at 1378, 1427–28.
129. *See supra* text accompanying footnote 124.

To fill the need for honesty in authorship credits and offer consumers the protection that they currently lack, Congress should enact legislation banning ghostwriting. Legislation such as that proposed in this note would protect consumers and promote honesty among authors. Without action, the status quo will continue, and consumers will continue to buy the lie of ghostwriting. Even worse, we will have bought the lie that ghostwriting is harmless while it continues to haunt our marketplace, our political processes, our medical research, and our culture.

T.J. Fosko[*]

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