

Assignment #3: Copyright Reform

An area of copyright law that should be reformed is the right of first sale or as it is also referred to, first sale doctrine. The right of first sale needs to be amended as it relates to illegal music resale through online services. The main issue at hand is that a consumer who has legally purchased music as a digital file (i.e. mp3) cannot legally resell it. The issue with the right of first sale as it relates to digital music copies is that music in a file format – as opposed to a CD or tape cassette is that in order to share the music a copy of the digital file is created and then given to the next user.

As stated by the U.S State Department of Justice: “The first sale doctrine, codified at 17 U.S.C. § 109, provides that an individual who knowingly purchases a copy of a copyrighted work from the copyright holder receives the right to sell, display or otherwise dispose of *that particular copy*, notwithstanding the interests of the copyright owner. The right to distribute ends, however, once the owner has sold *that particular copy*.”

There is no way to circumvent this ‘particular copy’ issue in digital copies. For the average consumer who has purchased a song from the iTunes store for \$1.50 and wants to resell it to someone else, they are unable to. Under the law of first sale they should be able to, but because a computer or service that operates on a cloud based file storage system technically copies the song to give it to another user (even if the original file is deleted) is still illegal.

The reform that needs to happen should be an amendment to the law of first sale, which has not been rectified for new digital technologies and purchasing on line. Since the law was originally written - and after adoption by the Berne Convention - buying music now is so much more different than having a physical copy. Allowing for digital music copies to be placed under first sale will allow consumers to have more control over the product they have purchased, as well as reduce frivolous felony charges for sharing a song with other users.

The reform to include digital copies in file sharing would allow for the law to be brought into the technological age and signify that music is in a different sale category from other works. Acknowledging that music is sold and released online and that the only way for a consumer to resell it is by making a digital copy would put more power at the hands of the consumer and allow for works that are not in a physical format to be resold at a profit.

It is most likely cloud based file sharing systems that would want to see a reform to the first sale doctrine because companies (like ReDigi) want to make a business model around digital sales. ReDigi has found itself in court appeals because judges must abide by first sale as not being a copy of the work first bought - an option that digital files do not have as they must be copied in order to be shared on a secure platform.

The main opposition to this reform of first sale in digital music copies is the wholesale distributors of music like iTunes or other services. This is because their business model depends on consumers’ inability to resell their purchases. There would also be opposition by musicians themselves as they would see a drop in sales and revenue, but it should be said that the majority of musicians now make the bulk of their profits from touring and performances than album sales, so this decline in immediate revenue would be negligible.

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According to a report by abcNews and Forbes: “Performers frequently moan about never seeing a royalty check from their record label, no matter how many discs they sell. But a top concert draw can take home 35 percent of the night's gate and up to 50 percent of the dollar flow from merchandise sold at the show. The labels get none of it.”

Even though it is beneficial for artists to make sure their music is played and has the widest exposure, a lack in revenue would hurt some artists at the top. The recorded music section of the label would also see a drop in revenue because they are not able to profit from the performances of the artist. First sale rights in music should apply to the consumer who purchases a digital file because the majority of music sold now is through online services. But amending the law to account for these digital files it would be an extension of first sale that is both responsible and progressive as music content is moving away from physical sale more and more everyday. This change will protect consumers who want to resell their music files and open up a new business model for implementing these sales securely.

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