VaST Transcript

Last week my town held a village- wide tag sale. People sold everything from old jewelry to board games and knick-knacks. While each tag sale varied in scale and quality, they each contained a pile of books and usually a CD or two for sale. These are standard re-sale items, with whole stores devoted to such second- use markets.

It is perfectly legal to resell these products under first sale rights, which allows owners to do whatever they want with a purchased copyrighted item. First sale rights can be applied to tag sale items but what about an MP3 or an e-book?

 When my brother was little he was obsessed with listening to songs from Alvin and the chipmunks. While they can be cute and endearing in short bursts, after a two-hour car ride they quickly became the most annoying pip-squeak “singers” on the planet.

\*Clip of Alvin and the Chipmunks singing\*

 When my family held our next tag sale, I made sure to slip the CD into the pile. While I never wanted to hear the CD again, I would have felt bad throwing it out. Now fast forward to the present, when all of my music is stored electronically in my iTunes library. The only way to get rid of a CD or a song is to simply delete it. There is no second-use market for my digital files.

Jason Schultz, a professor of law at UC Berkley spoke about second- use market with an NPR correspondent.

JASON SCHULTZ: There's a lot of value - both economic and social - that we get from having secondary markets. This case potentially kills them all off for the digital world and allows the copyright owner to say, well, if you ever want to read this book or see this movie or listen to this song, you have to come back to me, the original company, and get it from me. You can't get it from anyone else.

This was the hole in the market that a company called “Redigi” hoped to fill. Redigi, created in 2011, is an online marketplace where people can sell and buy “used” MP3s. John Ossenmacher, the founder and CEO of Redigi, believes that digital albums, just like their physical counterparts, should fall under the first sale doctrine.

Ossenmacher addressed this in an interview with NPR.

OSSENMACHER: We see it very, very clearly that a copyright good is a copyright good, and a buyer of those copyright goods are entitled to certain protections under the law, whether it first sale doctrine or other items. And those apply to digital just as much as they apply to any other format.

This all sounds great… almost too great. How can Redigi know that I haven’t made a copy of the song I’m sending them or that it is worth resale? Apparently using Redigi involves downloading their software. Once on your computer this software can check for the sources of audio files and also make sure that once you give a file to Redigi, there are no other file sources left on your computer.

What is the legal approach to this issue? There was no set precedence until Redigi was sued for copyright infringement by Capital records and lost. The transcription of the court case is actually quite comical because the Judge uses references to Star Trek and Charlie and the Chocolate factory to help mediate the case.

Here is a recording of NPR's legal correspondent Nina Totenberg reading from the court transcript.

NINA TOTENBERG, BYLINE: Judge Sullivan: I kept thinking about this. I'm not a Trekkie, but I kept thinking: It's the difference between Capt. Kirk going from the Enterprise to the planet through that transporter thing, where he's not duplicated, to the cloning, where there's a good and a bad Capt. Kirk, where they're both running around.

The case really boiled down to whether one can move an original MP3 someplace else without actually creating a copy and deleting the original. The lawyers on Capital’s side used this as their argument stating, “The fact that a file has moved from one material object — the user's computer — to another — the ReDigi server — means that a reproduction has occurred. Similarly, when a ReDigi user downloads a new purchase from the ReDigi website to her computer, yet another reproduction is created”.

The Judge ultimately ruled in favor of Capital records. The case defined that it is legal to sell MP3s but only on the device that they were purchased on.

Remember that really catchy tune I played you earlier?

\*Alvin and the Chipmunks\*

It can be yours for the price of an iPod and some change!

Jokes and Star Trek references aside, MP3s may never enter the second use market. Unlike items at a tag sale, MP3s never get worn out after use or vintage. There is no way of knowing whether a seller has duplicates on another hard drive or CD somewhere.

Additionally, this court case came at an unfortunate time. Before this ruling, Apple was planning on introducing a patent that would allow users to potentially transfer licensed music to other users in exchange for some money amount. Apple’s plan was to give a certain percentage of this “resale” to the original creator or publisher. Only time can truly tell where any of this will lead. Apple’s patent is still pending, and even if it is approved there is no defined answer to whether it will ever become more than an idea on paper.