

First Sale Doctrine

by Maggie Armstrong, JD

What is First Sale?

The US Copyright Act states that “the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.” This definition is found in Section 109 of the US Copyright Act.

What does that mean? First Sale is a concept that applies across all areas of intellectual property law. It means that notwithstanding the exclusive rights belonging to copyright holders, or the rights belonging to trademark and patent owners, a legitimate purchase or transfer of ownership of one particular copyrighted item or an item bearing a trademark exhausts the exclusive right to sell that item and prevents an owner of a copyright or trademark from controlling that particular item once it enters the stream of commerce.

In English, please? First Sale is a concept with which everyone is familiar, even if they don't know the name for it. **For example**, when you buy a copy of a published book, you are now the owner of that copy and you may do with it what you wish. Even though the copyright belongs to the author or the publisher, they are prevented from controlling what you do with your copy. You are free to lend your copy to a friend or to sell it at a garage sale. First Sale also supports the business of libraries and once popular video rental stores. Essentially, the “first sale” of an item forever exhausts the copyright owner's exclusive right to sell or otherwise dispose of that particular item, and although the new owner may not publish a new edition of the book, he is free to sell it or lend it as he wishes.

First Sale and the Secondary Market

Reselling Trademarked Goods The secondary market is populated with resellers of trademarked goods. EBay stores sell everything from Coach bags to Hello Kitty iPhone cases by retailers who are not affiliated with nor authorized retailers of the brands.

Is this trademark infringement? Under First Sale, it is not. Once a legitimate purchase is made, an item bearing a trademark may be resold. Legal precedent stipulates that the resale of a trademarked good is legitimate *as long as* the reseller does not state or create the impression that they are affiliated with or are acting as an



agent of the trademark owner. First Sale supports a free market and prevents authors and owners from controlling the secondary market. As long as the reseller does not claim an affiliation with the author or owner, resale is legitimate.

Maggie Armstrong is an Associate for Young Entertainment Law and can be reached at MaggieArmstrong@gmail.com. She volunteers her time to write for Volunteer Lawyers for the Arts.

