



The “First Sale” Doctrine

“YOU BOUGHT IT, YOU OWN IT.”

The “first sale” doctrine expresses one of the most important limitations on the reach of copyright law. The idea, set out in Section 109 of the Copyright Act, is simple: once you’ve acquired a lawfully-made CD or book or DVD, you can lend, sell, or give it away without having to get permission from the copyright owner. In simpler terms, “you bought it, you own it.”

Seems obvious, right? After all, without the “first sale” doctrine, libraries would be illegal, as would used bookstores, used record stores, and video rental shops (and their modern variants, like Amazon used book sellers and various online CD-trading communities like SwapTree).

But the copyright industries have never liked first sale, since it creates competition for their titles; for example, you could borrow a book from a friend, pick it up at a library, or buy it from a used book seller on Amazon.

First sale and other related copyright limitations also stop copyright owners from restricting how you use a copyrighted work after you buy it. For example, at the turn of the 20th century, book publishers tried to impose a minimum resale price on books by putting a notice in every copy. In the 1930s, record labels put “private use only, not for broadcast” notices on records in an attempt to block radio stations from playing their records without additional payment. In the 1980s, movie studios tried the same thing with video cassettes, trying to control the video rental business. Congress, the courts, and free markets have consistently rejected these efforts to undermine the first sale principle.

EFF has been fighting for this “you bought it, you own it” principle in a number of cases, such as:

- EFF is defending Troy Augusto, who auctions collectibles like “promo CDs” on eBay. These are CDs that Troy had himself purchased from used record stores around Los Angeles. After harassing a number of eBay sellers who sold “promo CDs,” UMG ultimately sued Troy. EFF took the case, leading a federal court in Los Angeles to reject UMG’s claims and reaffirm that “not for resale” labels do not trump your first sale rights.

www.eff.org/cases/umg-v-augusto

- Apple sells iPhones, but insists that you are not allowed to modify (“jailbreak”) the iPhone to use software from sources other than Apple’s own iTunes App Store or on a carrier other than AT&T. EFF has asked the U.S. Copyright Office to grant an exemption to the Digital Millennium Copyright Act (DMCA) that would make it clear that you’re not violating the DMCA when you jailbreak or unlock the iPhone you own.

www.eff.org/casw/2009-dmca-rulemaking

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