

To: US Department of Commerce, Patent and Trademark Office
Re: First Sale doctrine and related copyright issues, public comment

13 November 2013

The librarians of Trinity University wish to express the following views pertaining to the Department's inquiry into Digital First Sale issues:

1. The First Sale doctrine of US copyright law permits freer exchange of ideas and information through the unrestricted redistribution of original, authorized, physical copies of copyright-protected works. This represents a vital component of the higher education community's mission and benefits society on a larger scale by permitting easier access to the information necessary for spurring innovation and creative expression. We therefore believe that First Sale rights should likewise apply to the consumption of digital media: the conceptual precedent is established and accepted on this question, and only the medium has changed.

2. Extension of First Sale rights to consumers of digital media would support and protect existing, well-established Fair Use exemptions. Indeed, without the extension of these rights, Fair Use would itself be eroded. In the absence of First-Sale rights on duly-purchased electronic resources, universities, libraries, and other non-profit or educational institutions may be hindered in using such materials in support of their missions through the arbitrary strictures of private license agreements, some of which may encroach upon otherwise Fair Uses. College library users, for example, must not be obliged to depend on widely varying and unchecked license agreements that their institutions must consent to in order to have access to materials required for their study, research, and publication. Fair Use and First Sale rights are inextricably linked, and both must be preserved regardless of medium.

3. We recognize and respect the legitimate interests of publishers and electronic content providers in protecting their products. Rather than allowing the question of Digital First Sale rights to fall lopsidedly in favor of one interested coalition or the other, we recommend the exploration and implementation of technological tools that may wholly preserve Fair Use and First Sale rights while also protecting copyright holders' commercial interests.

Re: Modifications to the existing Digital Millennium Copyright Act (DMCA) infringement notice system:

4. We encourage the Department and the US Copyright Office to prohibit the practice of including extra-judicial "settlement offers" as part of DMCA infringement notices. This practice, in our observation employed by content rights holders in the adult entertainment industry in particular, amounts to little more than a technique to generate revenue without initiating due legal proceedings. Further, it arguably hinges upon "shaming" the accused infringer into paying the offered "settlement" so that the nature of the material involved isn't made publicly known. We do not view this practice as a

legitimate attempt to defend intellectual property rights or seek fair compensation for infringement.

5. We encourage the Department and the US Copyright and Patent and Trademark Offices to investigate and explore alternatives to the current DMCA notice system, which is haphazard, inconsistent, costly, myopic, and ineffective. Targeting very small-scale infringers and requiring significant technical support from ISPs and universities to do so is neither effective in deterring piracy nor in encouraging accused infringers to respect intellectual property rights. We advocate a copyright enforcement model that focuses on large-scale infringement and on public education regarding intellectual property issues.

Thank you very much for your attention and consideration.

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