Digital First Sale:

Can Copyright Catch Up?

Andrew R. Mancuso

The commodification of information is not a new notion; knowledge has predominantly meant power throughout the course of history. Knowledge is now becoming more ubiquitously available and new advances in the digital arena are knocking down the price of this commodity. Public libraries carry the mission of making information freely available however, the rapid and highly creative expansion of Internet-based-everything has given way to more stringent restrictions on what can be done with an electronic item. First sale on one hand grants libraries the ability to lend books but at the same time it is an obstacle, since there is no mention of the doctrine applying to digital objects in the language of the constitution. Recently, retail giants have been scrambling to scoop up patents for "online marketplaces for used e-content." These revolutionary marketplaces could have potentially serious implications on libraries in regards to servicing patrons, copyright and first sale, licensing agreements, and the long-term relevancy of the institution. Public libraries must commence advocacy efforts for a statutory addition of a digital first sale doctrine to §109 that would enable them to *actually purchase* titles and be able to do what they see fit with them, otherwise, retail companies may soon dominate the tradition of the library.

Let's begin with the company that has set the standard for used e-content in which Amazon and Apple are not far behind. The site ReDigi.com is the world's first used digital marketplace and since its inception it has become a heated topic of debate in the world of copyright. This Internet-based company provides a used digital content marketplace for purchasers to deposit their old songs (currently) and eBooks (in the future) for credit, not even real money, to invest again in other digital items on the ReDigi website. There is notable opposition to this form of marketplace, especially from Capitol Records.

The latest terrible blow has been dealt to supporters of the first sale doctrine in the most recent decision in the *Capitol Records LLC vs. ReDigi* case, "U.S. District Judge Richard Sullivan in Manhattan said ReDigi was not authorized to allow listeners to use its platform to buy and sell 'used' digital music tracks originally bought from Apple Inc.'s iTunes website." (Stempel, Barr NBC News). Capitol is claiming that the platform permitted the unauthorized reproduction and distribution of music that they owned the copyrights to; it was seeking damages for $150,000 per infringement. Judge Sullivan wrote, "ReDigi facilitates and profits from the sale of copyrighted commercial recordings, transferred in their entirety with a likely detrimental impact on the primary market of these goods" (Capitol Records, LLC, v. ReDigi Inc., 11). 150K per infringement is an astronomical amount of money to seek reimbursement for and I believe that it does not fall in line with the inferred degree of detrimental effect on the marketplace Capitol is asserting ReDigi could potentially cause. Yes, ReDigi was selling this used content at fractions of the cost of original purchase but the exposure to Capitol artists and the potential to earn money (albeit, minimally) once again on an already sold item should have counteracted this fact at least somewhat.

Evidence in favor of ReDigi would be that no money exchanges hands in this entire process but rather users are issued ReDigi Credits with which they can purchase new music. It seems that this market effect is nearly the opposite of

Capitol's claim: the user is not profiting monetarily by invoking their first sale rights, it is only helping artists become more widely listened to which has potential to lead to more purchases of their content through ReDigi or otherwise, not to mention a portion of the sale going to the copyright holder and ReDigi only collecting on the transaction fees. Although, I can see where Capitol would be a tad upset in the percentages of the sales, "[w]hen users purchase a file, with credits, 20% of the sale price is allocated to the seller, 20% goes to an "escrow" fund for the artist, and 60% is retained by ReDigi" (Capitol Records, LLC, v. ReDigi Inc., 3). Some adjustments could be made here in order to help ReDigi's image, say 30, 30, 40 or something similar that would highlight their inclination toward a balance between creators, distributors, and consumers. At least they are forking over *some* proceeds to the content creators/copyright holders! First, the record industry said that transactions and sharing such as is offered by ReDigi could not exist unless the artists are fairly paid. Along comes this company that wishes to provide a service not yet provided by anyone, who will (somewhat) fairly pay the artists as well as inadvertently promote the increased listening of the artists, yet the record executives are still griping. Is there no pleasing them? Indeed, with the introduction of used digital content marketplaces, the artist and producer would no longer be reaping the full income generated by an item but they would still be generating a portion of it through ReDigi's service on this item that Capitol technically couldn't "sell" again to begin with. In other words, it is making content available to a target audience of listeners who cannot afford to purchase "brand new" files in the first place and may be more inclined to illegally download the material.

What Capitol has chosen to accentuate in this case is that "[d]igital transmission of a work does not implicate the alienability of a physical artifact. When a work is transmitted, the sender is not exercising common-law dominion over an item of personal property; he is exercising the central copyright of reproduction with respect to the intangible work" (US Copyright Office DMCA §104 report). In short, this means that in any digital transmission of an e-object, there exists no way to exchange the original work as one would in a hand-to-hand transaction; a file is necessarily copied each time a transfer happens. It would be as though one walked into a used music store with a lawfully purchased CD and a blank CD in hand, burned their purchased CD onto the blank CD in the store, scratched the originally purchased CD with a set of keys, then threw that CD in the trash and sold the newly burnt copy to the store. Now, ReDigi had conceded in the injunction hearings that this *is actually not* what happens despite describing the process as a train migrating the file from one place to the next and "[a] train was only one of many analogies used to describe ReDigi's service. At oral argument, the device was likened to the Star Trek transporter –'Beam me up, Scotty' – and Willy Wonka's teleportation device, Wonkavision." (Tr., dated Oct. 5, 2012 ("Tr."), 10:2-12; 28:15-20.). The company maintains this assertion but has also admitted that there actually is intrinsic copying involved in the process of its platform. In order to reconcile this fact, the company now has 2.0 software that points iTunes-purchasers to store the file directly in the ReDigi cloud, allegedly eliminating the need to copy/delete from a user's computer to ReDigi. How this software functions is unbeknownst to me but if it makes atomic-level-transfer possible, it should be enough to satisfy the judge.

The case-log states, "…the reproduction right is the exclusive right to embody, and to prevent others from embodying, the copyrighted work [or sound recording] in a new material object [or phonorecord]. See Nimmer on 6Copyright § 8.02 stating that 'in order to infringe the reproduction right, the defendant must embody the plaintiff's work in a 'material object')'" (Capitol Records, LLC, v. ReDigi Inc., 6). By solely going off of this definition, it seems ReDigi has done nothing wrong since the plaintiff's work is not embodied in a material object, which is the whole basis against digital first sale: the alienability of a physical object. The next step is to concretely determine where these non-physical items exist in time and space and how the laws should change to accommodate these new definitions.

But does this mean that ReDigi is in the clear because they are not expressing the copyrighted works in physical objects? Well, according to the laws of physics, they are not off the hook at all. In *London-Sire Records, Inc. v. John Doe, 1* "the court…noted that the Internet transfer of a file results in a material object being 'created elsewhere at its finish'" (Capitol Records, LLC, v. ReDigi Inc., 6). Nobody wants to argue with science, which usually proves to be irrefutable evidence, so can't we simply recognize that this is a fact that cannot be amended? Shouldn't we accept a sort of "copy & deletion" method as constituting an actual atomic transfer since it has been deemed "impossible" to accomplish with files on the Internet? Not according to this case and not according to this judge's ruling: "It is beside the point that the original phonorecord no longer exists. It matters only that a new phonorecord has been created" (Capitol Records, LLC, v. ReDigi Inc., 7). This is like a surprise steel wall jutting up in front of the bullet train of innovation running at full speed. There must be another way to come to understand the nature of these digital objects; the answer lies perhaps in a unanimously agreed upon technology that will one hundred percent, undoubtedly remove the file after it has been "transferred" and ensure there are no other copies located anywhere else on that machine. As for external hard drives and the like, one could possibly affix something like the Secure Digital Music Initiative's addition of a "digital watermark" that was linked to some disabling device that would no longer allow the file or digital content to be used once it has been sold or transferred in an online marketplace. I am unsure if this is possible at all, especially if the external device never makes it online, but it may be something to consider. These sorts of conditions should serve as satisfactory in a case like this however it all reverts back to language and distinctly defining the various aspects of digital objects consistently.

Patry believes that "…there must be mandatory, independently-produced, impartial, empirically rigorous impact statements *before* any new copyright legislation is passed, as well as impact statements for existing laws so that we know whether existing laws need to be amended or repealed…[a]dditionally, impact statements must be based on a meaningful match between the evidence and the goals…" (Patry, 52). So, when we discuss the detrimental impact of ReDigi on the primary market, we must look at the evidence and the goals. The goals are easily understood: provide an online location where users can exchange, swap, sell or discard their lawfully purchased digital content.

The kicker is really in the nature of the content and licenses because these items do not qualify as "items" since they are leased or rented via various sly loopholes. The evidence for this potential impact cannot really be measured as of yet but the only disconcerting portion of the facts in the case is that "if a copy [of a song] is detected, Media Manager prompts the user to delete the file. (Cap. 56.1 ¶ 64.) The file is not deleted automatically or involuntarily, though ReDigi's policy is to suspend the accounts of users who refuse to comply" (Capitol Records, LLC, v. ReDigi Inc., 2). I can understand how this evidence could have an effect on the market influence in a negative way if the user has stored copies elsewhere though I wonder just why a removal program has yet to be designed and implemented successfully. Just as libraries with Overdrive, say, have an automatic removal from the device once the due date comes about, the same sort of thing should be applied to digital objects that correspond with the purchase, not corresponding to a specified date but rather coinciding with the point in time when the file is transferred. Library licenses the eBook, library can lend the eBook (anti-circumvention in place to ensure the user will not copy and distribute), library can make authorized copy for reserve in case of file corruption or something similar, library can donate or loan to another library (eILL) or remove the item from their collection completely, just as first sale allows for a tangible item.

All I can see ReDigi's efforts doing is creating activity and enthusiasm in their used digital content marketplace by creating non-monetary incentives to enable users to exercise their right of first sale in a digital environment. A balance must be struck so that everyone is can have their cake and eat it too; this though, as we all know, is not how our current understanding of copyright exists. Incentives are the standard model of copyright law but copyright doesn't bargain with the participants involved in its strategic game. Since the digital realm has upturned most everything we formerly understood about these issues, both parties need to be flexible and attempt to come to an agreement. As soon as the copyright holder's exclusive rights are impinged upon in the slightest there is an explosive reaction. We must continue to adapt to the digital environment and that includes the realization and acceptance that the creation of these marketplaces will continue to exists, legally or not. Philosophical quandaries currently drive copyright rather than pragmatism in regards to queries of every-day corollaries that should really be pushing this system. James Grimmelman muses, "Authors, publishers, readers, libraries, and everyone else with a stake in the copyright system care about who gets access to books and on what terms. All of the technological details ought to be cute irrelevancies once the basic questions are answered. *Who gets to read? Who gets paid?*" (Grimmelmann). There is real truth in his remarks; copyright could be fixed, if not at least patched up, by trying to hash out these questions collaboratively and bringing the act into the 21st century with its original intent in mind. As of now it is decided that the existence of an affirmative defense is absent in the ReDigi case and they are found to be infringing.

In an effort to get back to the roots of copyright's existence, Jessica Litman states, "History teaches that whenever we have discovered or enacted a copyright exception, an industry has grown up within its shelter" (Litman 106). We've seen it happen all the way from player piano rolls to videocassette recorders and now we will be watching as the resale of used digital content will lend itself to the creation of digital marketplaces by the library's toughest competitors, Amazon and Apple. If these for-profit mega-enterprises are to be allowed privileges enforceable through contracts and licensing agreements, then the nonprofit educational institutions at least should be granted digital first sale. Ebooks and other forms of digital content (audio, video, software etc.) are not much closer to demystification today than they were upon their introduction to the information landscape. Granted, there have been great strides toward the development of an understanding and acceptance of these digital objects, many of the aspects are becoming more and more convoluted. This is especially true in public libraries. There are a lot of options for digital lending but it is mostly in the form of individual licensing agreements with the exception of a select few in California that have, through win-win negotiation tactics, have come up with a model that allows them to genuinely own their eBooks; theirs is a model all libraries should examine and work towards. However, as John Palfrey indicates, "Libraries have had limited success in negotiating terms in their favor. License terms can supersede exemptions in the Copyright Act, including the very limitations upon which libraries so heavily rely, and impose restrictions on the manner in which works may be accessed and used by patrons" (Palfrey, 1). Thirty, maybe even twenty years ago, very few librarians would have been able to predict that in 2013 their organizations would have to step back and seriously assess commercial, profit-driven lending options as their fierce, deep-pocketed contender.

The question seems to be how do we separate the tangible from the intangible? Yes, there is a said "inexhaustible life" span on digital objects, another fact that must be faced but not by forcing libraries to continue to sign away their money to rancorous, constricting licenses year after year for digital content. Public libraries are more often than not strapped for cash as it is. Nonetheless, these ethereal versions of the tangible certainly have the ability to affect our minds in some way, shouldn't that be the real measure? Just because I cannot hold a digital file in my hand doesn't mean that I can discount it as intangible. We must touch *something* (e-reader, computer, etc.) in order for the object to have any effect on our minds. The eBook version of *Freedom* by Jonathan Franzen is still *an original idea in a fixed (if not a traditionally tangible) form*. A tangible idea qualifies and calls for copyright protection and should thus be included in the §109 statutory language that is explicitly inclusive of digital objects.

Section 101 language states, "'Literary works' are the works, other than audiovisual works, expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects, such as books, periodicals, manuscripts, phonorecords, film, tapes, disks, or cards, in which they are embodied" (17 USC § 101). It seems that we should be able to include digital items in first sale doctrine but the whole licensing game has thoroughly impeded our ability to do so. Publishers and distributors have made it quite apparent that digital first sale for libraries, or anyone, will be an uphill battle by going so far as engaging in exploitative behaviors:

> In September, a federal judge granted preliminary approval to a $69 million settlement between 49 states and three U.S. publishers over alleged price-fixing of electronic books. The accord— between Hachette, HarperCollins, Simon & Schuster, and 49 states (all but Minnesota)—was approved by U.S. District Judge Denise Cote in New York. The District of Columbia, U.S. Virgin Islands, Northern Mariana Islands, and Puerto Rico also joined in the settlement. The states had alleged that the publishers unlawfully agreed to fix the prices of electronic books in violation of antitrust law (American Libraries).

We need the content, they know this, and they can coax us into agreeing to any number confounding conditions shrouded in shadowy licensing contract jargon to get it; it's the old dangling carrot and rabbit scenario. It doesn't have to be this way though; publishers could possibly come to view the library as a potential increase in revenue through exposure of their products. Many already have realized the value offered by libraries but as bookstores continue to collapse and the number of ebooks continues to increase, "libraries will play an ever more crucial role...For publishers, the library will be the showroom of the future" (Vinjamuri). This should be ringing true as day in every publisher's mind, however the progress that's been seen in negotiations has been incremental at best.

We must examine the intentions behind the library's desire for digital first sale: it facilitates everything, basically. There would be no more recurrent, messy licensing agreements to be laid out; language could be included in the digital first sale clause that explicitly states any inherent restrictions (DMCA, etc.). The library could then rent out its copy/copies to patrons, of course with proper copyright notice, for as long as the library deems suitable and with the comfort of knowing that they can have this eBook as long as they like. Creators and publishers do not find this appealing, this fact that you don't have to replace it, though we mustn't discount the notion of "digital/bit rot." As we move forward into the future, we can observe the telescoping of technological advancement. This means that since we look forward to purchasing new devices at an ever-shortening rate, we can also look forward to a never-ending inevitability of migrating data to new platforms and devices. There are numerous ways for data to meet their end, which they undoubtedly will, and format shifts are going to be their primary executioners. Libraries will of course be charged with keeping on top of these shifts thus necessitating the legal ability to preserve and transfer their digital objects as needs change throughout time. This could be done with the inclusion of a digital first sale clause.

One option we as a country could consider would be along the same road toward the 1985 Public Lending Right Bill. This is how libraries in Canada, the UK, and Australia handle first sale: "Public Lending Right (PLR) is an internationally recognised concept of compensation paid to authors to recompense them for income lost by the free multiple use of their books in public lending libraries" (Minow, 54). PLR is a dreadful paradigm for libraries, as it would put an end to our whole shtick about making knowledge available for the price of taxes. This is essentially what Amazon will do with their used digital marketplace. Authors, publishers, and content creators have gotten a taste of exclusive rights and wish to continue their reign of complete control of their work; anything that opposes copyright law in such a way will certainly leave a bitter taste in their mouths. If the taste of granting public libraries and nonprofit educational institutions digital first sale is so appalling, maybe there is a chance for reconciliation between the parties with something such as the PLR. Admitted, this gets us no closer to digital first sale but is a potential option for negotiation.

Libraries already have to pay yearly to make an eBook available again because the content does not degrade, now, who ever concluded that it only takes one year for a book to degrade to the point of replacement? I was just at work today handling a hard copy of a journal dating back more than two hundred years. This is a side note of something that must happen: a real investigation as to how digital objects degrade over time through use subject to format shifts. This process of digital degrade is one that, because of the telescoping of technological evolution, will become more than easily observable. It will be as if one witnessed the shift into obsolescence of records, 8-tracks, laser discs, VHS, and cassette tapes in a mere five or ten years. One year seems much, much too short considering there are countless books on the shelves that have been in existence and been used for extended periods without becoming unusable so a scientific inquiry is absolutely called for.

There is a lot of opposing language and double negatives in copyright law; what may qualify a work for copyright protection here disqualifies it for first sale over there. Copyright law is at a frontier, that of which it has never faced before. It is a frontier that calls for new language and statutory revisions. All of the tech-savvy hackers and computer programmers out there could serve as extraordinarily valuable assets in policy making because if they could figure out a way to create, constitute, or designate eBooks and other digital content as distinct, separate items without compromising copyright law (too much), then digital first sale could very well become a reality. If publishers decided to create a run of eBooks in this fashion for new or older titles dedicated specifically to library/nonprofit educational institution use and granted digital first sale rights to these copies, they would be able to send a fixed amount to major libraries and they could subsequently send them to other libraries as needed. Some libraries have conquered their licenses by demanding perpetual access to the title(s), though this has mostly been in academic libraries that publishers rely on, it may still be a negotiable option in the public sector since a good portion of their income is generated from mass audiences. It is almost expected that this will not happen though; our capitalist society is driven by the almighty dollar and those who favor a more free exchange of knowledge are usually, and quite easily, snuffed out.

I would like to know what the moral position of Amazon is. Would it maintain a utilitarian standpoint for setting up this digital resale marketplace, just trying to make information more available and satisfy their customers while tossing a few shillings into the copyright holder's pocket *or* are they trying to stack piles upon piles of incalculable profit? I'd bet the company leans more toward the latter.

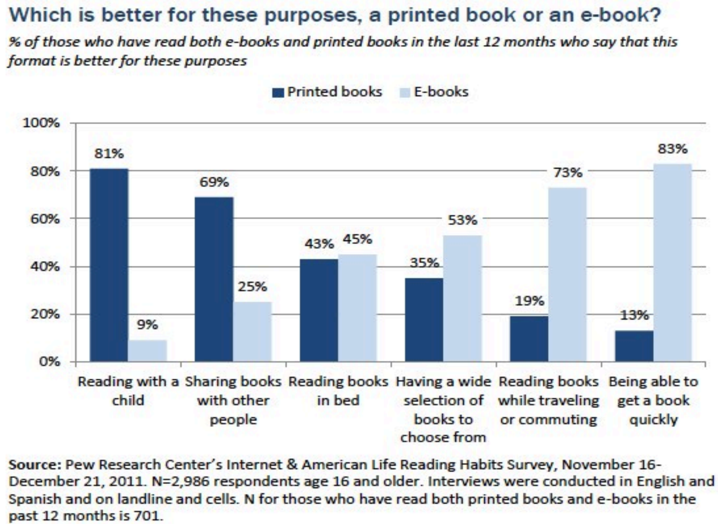
If Amazon and Apple are to be allowed to resell used digital content through a conduit of licensing agreements and contracts making pretty pennies all along the way, why should libraries and users be subjected to restrictions of content they "purchase" legally? The Apple and Amazon patents, respectfully, read,

> Techniques are provided for managing access to a digital content item (such as an eBook, music, movie, software application) to be transferred from one user to another. The transferor is prevented from accessing the digital content item after the transfer occurs. The entity that sold the digital content item to the transferor enforces the access rights to the digital content item by storing data that establishes which user currently has access to the digital content item. After the change in access rights, only the transferee is allowed access to the digital content item. As part of the change in access rights, the transferee may pay to obtain access to the digital content item. A portion of the proceeds of the "resale" may be paid to the creator or publisher of the digital content item and/or the entity that originally sold the digital content item to the original owner (USPTO).
>
> An electronic marketplace for used digital objects is disclosed. Digital objects including e-books, audio, video, computer applications, etc., purchased from an original vendor by a user are stored in a user's personalized data store. Content in a personalized data store may be accessible to the user via transfer such as moving, streaming, or download. When the user no longer desires to retain the right to access the now-used digital content, the user may move the used digital content to another user's personalized data store when permissible and the used digital content is deleted from the originating user's personalized data store. When a digital object exceeds a threshold number of moves or downloads, the ability to move may be deemed impermissible and suspended or terminated. Additionally or alternatively, a collection of objects may be assembled from individual digital objects stored in the personalized data stores of different users, and moved to a user's personalized data store (USPTO).

The deceptive language is startling, even in the patents. If someone commits to a transaction, namely money for personal ownership of an item, shouldn't the consumer have the right to do what he/she will with it while staying within the boundaries of the law? 109 states, "…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" (17USC§109). What Amazon and Apple seems to be attempting is to create this option for themselves with regard to digital objects in an aim toward direct commercial advantage. We can deem ourselves officially in a copyright pickle when the information provider tycoons get to regulate first sale through licensing while libraries, being the nonprofit institutions they are, there is no direct or indirect commercial advantage for the addition of a digital first sale doctrine.

Libraries, if not everyone, should be entitled to first *sale* rights on their digital items. If we continue along with the deplorable licensing as a convenient, money making solution, this can only become more and more complicated (which is good for copyright and contract lawyers, Amazon, and a few others) however, with the inclusion of a statutory addition to §109 of a digital first sale clause will lead to streamlined purchasing, using and sharing lest us forget the true purpose of copyright: promote the progress of learning. Sharing culture, we cannot avoid it or regulate it as much as we have thus far; information is to be consumed and shared readily with others as it nurtures growth in human knowledge and understanding.

We can plainly see from this chart that eBooks are miserably failing at the whole sharing bit.



(Pew Internet and American Life Project, 1)

The language is unbelievably misleading on Amazon and Apple's parts: when you *purchase* or *buy* something, it should be considered lawfully yours. By creating the system of rentals disguised as purchases by licensing agreements, Amazon and Apple have effectively swept first sale and the benefits of sharing derived from the doctrine under a rug.

A recent win for first sale advocates would be the *Kirtsaeng v. John Wiley & Sons, Inc.* Yes, this counts as a win but I find it simply another case of tight language that needs to be navigated through to uncover the win. The US Supreme Court found the international student Kirtsaeng not guilty of infringement for importing textbooks from Thailand and selling them in the US because they were legally produced and acquired editions. Justice Kagan remarked, "Neither the text nor the history of 17 U. S. C. §109(a) supports removing first-sale protection from every copy of a protected work manufactured abroad" (568 U. S. Kirtsaeng, DBA

Bluechristine99 v. John Wiley & Sons, Inc., 2013). However, if we think about it, why is this kid lawfully allowed to bring in legal copies of textbooks from another country and sell them for a significant profit in the U.S. with an blindingly apparent detriment on the primary market of these items but we as libraries cannot seek amendment to § 109 to include digital objects that more than likely *will not* have a negative affect on the marketplace? I am unsure about this case but it is a step in the right direction toward having control over our legally purchased property. One can be more than sure if a student purchases a digital version of a textbook (much of the time outrageously pricey) that they will want to sell it back to a distributor or transfer their "ownership" (licensing agreement) to someone else that can use it. I concur with Patry when he says, "Distorted incentives lead to distorted conduct; because our current copyright laws provide rights and remedies that are far beyond what is necessary for copyright owners to recoup their investments and make respectable profits, and instead give copyright owners powerful weapons to squash competition and control consumers, we should not be surprised that the copyright industries utilize those weapons [and then some]" (Patry, 102). He is completely correct because copyright owners will usually act in their own best interests, which *aren't* usually the best interests of everyone; a balance must be struck at some point where adequate motivations exist in order to continue encouragement of the creation of new works.

There is a parallel to be drawn here: Schumpeter's notion of creative destruction and how it is essentially how capitalism exists and thrives by "incessantly revolutioniz[ing] the economic structure *from within*, incessantly destroying the old one, incessantly creative a new one." (Schumpeter, 83) We can certainly count the creation of a marketplace for used digital objects as an innovation and since innovation is how capitalism survives, it seems foolish to repress it. It is especially incorrigible to restrict the premier innovator, nit-pick about the inescapable fact that digital items must be copied to be transferred, then grant patents to do the exact same thing to two information monopolies, Amazon and Apple.

Most folks will agree to any pop-up nonnegotiable license as long as they can move on with their activity, even if it means they are actually licensing a book from Amazon and not purchasing it. If they (Amazon/Apple) can bury and disguise the limitations enough, it seems as though there are none; then when users come to find out differently, they can become rather upset. Coercion for creators to license isn't that hard either: you will still get paid and no one will really ever own a copy of your work. "Copyright owner interests argued that, in a digital age, anyone with access to their works could commit massive violations of their copyrights with a single keystroke by transmitting unauthorized copies all over the Internet." (Litman 82). Of course, this is a very real concern but with the help of the DMCA, encryption, automatic deletion and other technological restrictions, it can be used in the creators' best interests. A very apt statement is that copyright law "can permit them [owners] to control reproductions of their work without giving them the power to restrict consumption of their works." (Litman 83). This is an ideal situation.

Copy-protection technology should not be that difficult to establish and enforce and due to the continuing development of hacking techniques the law was amended, the DCMA introduced to "make it as close to impossible as the law could bring it" (Litman 93) Since it is ostensibly so close to impossible to circumvent these anti-copying technologies, why rely on licensing so much? Public libraries have little to nothing to gain by having the protection of traditional first sale doctrine extend to digital items, the only thing preventing it seems to be the monetary interests of publishers; they are already apprehensive to issue newly released eBooks to libraries because, well, why purchase a license to read an item through the vendor or distributor when you can go to the library and rent a copy for free? The creation and inclusion of digital first sale for libraries would mean that Amazon, Apple, and other used digital content marketplaces would find increased competition in their nonprofit counterparts. Patry states, "If an innovative product or service does not provide competition to existing products or services, it is not innovative. Competition is inextricably linked to innovation" (Patry 225). If the retail giants' reselling of used digital content goes without competition, it cannot be considered an innovative service not to mention a cornering of the e-used market in a monopolistic manner.

What I have discovered is that this copyright problem is a succession of rabbits on treadmills running after iconic carrots with the top information providers swaying the largest veggies above everyone. The US Copyright Chief, Maria Pallante, spoke of the "Next Great Copyright Act" and what must be addressed; first sale issues is undoubtedly on the list of topics to be covered. Change is slow coming and "[a] few years of solid drafting and revision is what you're really looking at if you want to do something" (Kravets, 1). Right now, suffocating language makes it unclear what is what in the law and whoever's lawyer is better at dissection and interpretation will prevail in a dispute. Beginning from bare axels and building up a functional copyright car for today's environment is a daunting task and will require logical analysis, thoughtful reconfiguration, solid new construction methods, and a little cooperative grease to ensure all parties' satisfaction. It seems that every time the scales are tipped a touch in one direction, they tip incongruently the opposite way moments after. Balance is what must be sought, it is the key, but we ourselves are charged to fashion it first.

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