

November 13, 2013

By email: CopyrightComments2013@uspto.gov

Before the
U.S. Patent & Trademark Office
National Telecommunications & Information Administration
Department of Commerce
Washington, DC

In re

Request for Comments on Department
of Commerce Green Paper, Copyright
Policy, Creativity, and Innovation in the
Digital Economy

Dkt. No. 130927852–3852–01

**COMMENTS OF
eBay Inc.**

In response to the request for public comments on certain issues relating to copyright policy, creativity and innovation in the digital economy (78 Fed. Reg. 61337, October 3, 2013), eBay Inc. submits the following, brief comments on issues that particularly concern our business and users.

eBay does not believe that there is any reason to revisit at this time the intricate set of obligations and protections embodied in the DMCA’s notice and takedown system, which have, over time, proven to be both balanced and effective. In addition, eBay shares the concerns expressed in the comments submitted by the Internet Association and the Computer and Communications Industry Association about the harmful effect that the potential for excessive statutory damage awards could have on innovation. eBay’s submission will focus on the issue of first sale in the digital environment.

eBay is pro-copyright. Indeed, because of the eBay marketplace, creators, owners and vendors can reach a virtually unlimited global market for their goods, thereby contributing to the public dissemination of many works – a key policy goal behind copyright law. eBay provides a service for buyers of existing works and helps generate interest in and establish markets for new works.

The global marketplace that is created by the Internet enables greater access to creative content than has ever been possible in the past. Online channels have reduced the price of goods by increasing demand and removing the heavy infrastructure costs traditionally associated with global trade.

For sound public policy reasons, eBay institutionally opposes barriers to and restrictions on free commerce and defends the free alienability of property that individuals legally acquire. Such free alienability of property is part of the fabric of the U.S. economic system and underlies the common sense understanding that Americans have about the goods they buy and the property they own. In the

context of copyrighted works or works containing copyrighted content, this means a robust first sale doctrine which untethers legitimate goods – digital or otherwise -- from latent interests once they have been legally transferred or placed into the stream of commerce.

The benefits of the first sale doctrine are numerous. It enables the purchaser of a copyrighted product to transfer that product to other parties by selling, lending, leasing, or giving the product to the parties without obtaining permission from the copyright owner. This promotes free and open commerce, moves products from those who value it less to those who value it more, enables innovative rental based business models, as well as charitable giving.

These benefits are being enjoyed by owners of physical products being sold online. But, if a digital good is subject to a license then a court could deem the purchaser to be a licensee, not an owner, and thus the purchaser would not be able to rely on the first sale doctrine to legally transfer the digital good.

eBay specifically commends the Internet Task Force for devoting attention to the impact on commerce, competition and consumer welfare caused by the lack of recognition of a digital first sale right. As the operator of a leading global marketplace that enables hundreds of thousands of retailers to offer goods for sale, and that empowers consumers through -- among other things -- transparency, choice and price competition, eBay has a strong interest in policy proposals in this area.

eBay has a keen interest in the Task Force's consideration of the first sale in the digital environment. eBay stands ready to assist the Task Force as it conducts its deliberations and we look forward to the continued discussion of this matter.