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A Setback for Resellers of Digital Products

By BEN SISARIO

A federal judge in New York has dealt a blow to the nascent business of reselling digital goods like music and e-books, ruling that a small company's secondary market for digital music infringes on the copyrights controlled by record companies.

The company, [ReDigi](#), opened an [online platform](#) in late 2011 that allowed people to upload and resell songs they had bought from online retailers like Apple's iTunes. ReDigi said its technology deleted the original file once a copy was put up for sale, but the major record labels were skeptical, and Capitol Records sued in early 2012.

The case has been closely watched as a test of whether the first sale doctrine — the legal principle that someone who owns a copy of a copyrighted work, like a book or album, is free to resell it — can be applied to digital goods.

In [an order dated Saturday](#), Judge Richard J. Sullivan of United States District Court in Manhattan ruled that ReDigi was liable for copyright infringement, and seemed entirely unmoved by ReDigi's arguments.

"The first sale defense does not cover this any more than it covered the sale of cassette recordings of vinyl records in a bygone era," he wrote.

In sometimes wry language — one footnote mentions that ReDigi compared its system to the "Star Trek" transporter and "Willy Wonka's teleportation device, [Wonkavision](#)" — Judge Sullivan ruled that ReDigi's system infringed on Capitol's reproduction rights because it transmitted an unauthorized copy of the file over the Internet.

In a statement, ReDigi said it was "disappointed" by the ruling and would appeal it, but noted that the decision applied to its original technology, not its updated version, ReDigi 2.0.

"While ReDigi 2.0, 3.0, or 4.0 may ultimately be deemed to comply with copyright law," the judge wrote, "it is clear that ReDigi 1.0 does not."

Damages for the infringement will be considered at a later date.

Capitol Records did not respond to a request for comment.

Although ReDigi is a small player in the world of digital media, the case has been watched for the effect it may have on [two giants, Apple and Amazon, which have applied for patents for secondary digital markets but have not put them in place.](#)

In addition to record companies, [book authors](#) have spoken out against the idea of a digital secondary market, saying that the presence of a “used” but perfect digital copy of a book would cause prices to crash.

Among those supporting reselling digital goods are libraries, because it could make more material publicly available.

The decision came less than two weeks after the Supreme Court upheld the first sale doctrine in the case of [Kirtsaeng v. John Wiley & Sons](#), about a student who was importing and selling textbooks that he had bought at a lower price overseas.

That case concerned different aspects of the rule, and legal experts said it did not apply strictly in the ReDigi case. But digital rights advocates worried the decision effectively banned an online secondary market.

“The decision was very one-sided,” said Jason M. Schultz, an assistant clinical professor of law at the University of California, Berkeley. “There needs to be some way to resell if we believe the Supreme Court that first sale is important.”