

# RESELLING DIGITAL MUSIC: IS THERE A DIGITAL FIRST SALE DOCTRINE?

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## I. INTRODUCTION

Two years ago you set up your iTunes and eBay accounts and began purchasing digital music for your iPod and MP3 players. You have sold previously purchased compact disks (CDs) to retailers, but now, after reviewing your digital music library, you want to sell digital files as well. Luckily, you read about a new company, Bopaboo, designed to help consumers sell their used MP3s and other digital music. Unfortunately, you could be violating copyright laws by reselling your digital music.

Section 102(a)(2) of the Copyright Act of 1976 (the Act) provides protection for “musical works, including any accompanying words.”<sup>1</sup> For a work to be protected, it must be original, and must be “fixed in any tangible medium of expression.”<sup>2</sup> A copyright owner has the exclusive right to reproduce all or any part of the work, distribute copies, publicly display, publicly perform, and prepare derivative works of the copyrighted material.<sup>3</sup> Copyright owners are given these rights to incentivize them to continue creating works, which benefits society as a whole.<sup>4</sup>

Copyright ownership is vital in the music industry because the rights afforded to copyright holders determine profit and royalty distribution.<sup>5</sup> Copyrights developed at a time when sound recordings were disseminated and acquired in physical form, such as CDs and cassettes, and record

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1. 17 U.S.C. § 102(a)(2) (2006).

2. *Id.*

3. *See id.* § 106.

4. *Washingtonian Publ'g Co. v. Pearson*, 306 U.S. 30, 36 (1939).

5. *See* Brian Mencher, *Digital Transmissions: To Boldly Go Where No First Sale Doctrine Has Gone Before*, 10 UCLA ENT. L. REV. 47, 53 (2002).