

RECONSIDERING THE “BALANCE” OF THE “DIGITAL FIRST
SALE” DEBATE: RE-EXAMINING THE CASE FOR A
STATUTORY DIGITAL FIRST SALE DOCTRINE TO FACILITATE
SECOND-HAND DIGITAL MEDIA MARKETS*

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I. INTRODUCTION

On September 12, 2006, Apple, Inc. CEO Steve Jobs announced at a promotional event that the company’s iTunes Music Store had become the fifth largest music retailer in the United States, trailing closely behind Amazon.com and traditional “brick and mortar” retailers Best Buy, Wal-Mart, and Target Corp.¹ The announcement, which came just three years after the store’s opening, signalled the arrival of legal digital media distribution as a permanent fixture in the American economy, alongside more

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1. Nick Wingfield & Merissa Marr, *Apple Computer Aims to Take Over Your Living-Room TV*, WALL ST. J., Sept. 13, 2006, at B1.