

Digital Publishing and the First Sale Doctrine

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With the development of digital publishing, the market of digital objects including e-books, audio, video, computer applications, etc., is rapidly growing. Electronic marketplaces like Amazon or iTunes have been developing very well in western countries; however, their businesses seem less successful than expected in China. The Chinese domestic platforms promote their markets by the strategy of extremely low prices even free of charge. It seems that paying for online music or other digital content items is less acceptable for Chinese.

In recent years, some internet intermediaries In the US and also in Europe are promoting ways for internet users to resell their used digital objects. Copyright owners and collective societies brought lawsuits against those intermediaries to claim copyright infringements. The first question under active debate is whether the deal between the platform and the first "buyer" is a license or a purchase. Then if it is a purchase, we have to answer whether the copyright owner's right to control distribution is exhausted on that object. In the traditional copyright law, the first sale doctrine is an essential way to balance between authors' rights and public access to works. It can be only applied to products with physical formats. The US Copyright Office has discussed in its reports whether to extend first sale doctrine to digital products in 1995 and further in 2001, but finally decided the "wait and see" approach.

By studying the cases mentioned above, Chinese scholars begin to discuss whether such reselling business model can be developed in China and thus promote the market of digital content items. Currently China is amending Copyright Law. Establishing "digital first sale doctrine" has been proposed by many scholars to the legislature. On one hand, if reselling digital objects is legal, the price of the first-hand digital content items can be increased so that it will be more beneficial to the economic interests of copyright owners. On the other hand, if reselling digital objects is not illegal, that is to say, customers should have such right to resell what he buys. Electronic marketplace platforms should facilitate customers and at least not to prevent such activity. If this comes true, it will result in a revolution of the digital publishing industry. A unified e-products trade mechanism might be necessary to harmonize the disordered e-market in China. Moreover the powerless collective societies might be easier to find their crucial roles in the unified system.

The possibility of future resale can stimulate customers to pay for the first-hand digital objects, enhance the affordability, popularity and circulation of such e-products, and in turn, increase the demands for first-hand digital items. Moreover, the lower price of used authorized content can also squeeze the room of pirated content. Resale of digital goods will be a trend of digital publishing in the near future. Both Amazon and Apple LLC have filed applications of patents to resell digital products. The existing information technology can realize the reselling of digital contents without losing control of the copies in secondary market, and the copy in the transferor's storage medium can be automatically deleted after being resold out. Copyright law needs to give response to the new technology. In order to balance the interests between copyright holders and customers and achieve a win-win effect, and to stimulate more

innovative technology, the current strategy in China should be altered, since it is unfavorable to the development of digital publishing industry in the long run.