



Music to Copyright Owners' Ears: Second Circuit Affirms *Capitol Records, LLC v. ReDigi Inc.*

A federal appeals court finds that online music service ReDigi infringed Capitol Records' copyrights by allowing users to resell legally purchased iTunes files.

Digital music files may not be lawfully resold, according to a recent holding by the U.S. Court of Appeals for the Second Circuit in *Capitol Records, LLC v. ReDigi Inc.*, Case No. 16-2321. On December 12, 2018, the Second Circuit affirmed the district court's ruling that the defendants' Internet platform, which enables users to resell digital files lawfully purchased from iTunes, infringed the plaintiffs' exclusive rights to reproduce their works.

Critical to the Second Circuit's decision was the fact that, despite deleting previous copies throughout the course of transferring the digital music files, each transfer fixed the file in a new material object. Thus, each transfer to ReDigi's server and each new download to their device creates "new phonorecords." Relying on the district court's analysis, the Second Circuit buttressed its finding of infringement with support from the U.S. Copyright Office's 2001 conclusion that the resale of digital files is infringing. Finding the unlawful reproduction alone a sufficient basis to affirm, the court made no ruling on whether the distribution of digital files also constituted infringement.

Turning to the defenses, the Second Circuit held that the first sale doctrine does not apply to reproduction rights. The court also held that ReDigi's system is not protected by the fair use doctrine because the defendants were commercially motivated, made no changes to the copyrighted works, used the entire works, and resold the digital music files in the same market as the copyright owners.

The Second Circuit declined to extend the Copyright Act beyond its plain language, despite pressure from amici to endorse principles of technological neutrality and calls to modernize the Copyright Act.



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