

Legal Update from Flagler Law Group



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Brian Flagler founded Flagler Law Group in the spring of 2006 to serve the legal needs of publishers, designers, producers, and distributors of Christian media. With a combined 20+ years in the industry, we know Christian publishing. We believe that our experience handling matters for a diverse variety of Christian publishers, ministries, and other organizations **from the publishing perspective** significantly contributes to the value that we offer our clients.

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The Digital Secondary Market: Amazon's Plans for a "Used" eBook Store

By Brian Flagler and Craig Gipson

Amazon may soon allow customers to buy, sell, and trade their "used" digital items, at least if patent records are an accurate indicator of its plans. On January 29 the world's largest e-tailer obtained a patent on technology for a "secondary market for digital objects." These digital objects – which Amazon lists as ebooks, audio, video, computer applications, etc. – will be eligible for sale from one user to another, just as physical products are now.

According to Amazon's filing, customers could store ebooks, music, movies, and apps in an online storage location. When a customer wants to sell or trade a particular piece of content, the content would be moved to another customer's storage location (with Amazon keeping a percentage of the transaction, of course). Amazon may "maintain scarcity" of content by limiting the number times a piece of content may be transferred.

Amazon is the largest but not the first company to venture into the used digital content space. Start-up ReDigi announced plans more than a year ago to develop a site for users to sell and trade "used" digital music [see [July 2012 Legal Update](#)]. Record label EMI challenged ReDigi's technology as infringing copyright and the parties are engaged in an ongoing lawsuit (1). The litigation has not stopped ReDigi's expansion plans, however, as it announced last month its intention to launch a ReDigi site in the U.K. Europe has already adopted a digital "first sale" doctrine that allows users in the E.U. to sell downloads purchased under a purported license (2) [[July 2012 Legal Update](#)].

Amazon and ReDigi's plans for a digital secondary market still rest on uncertain legal ground. Unless Congress acts, whether the U.S. will follow Europe in allowing customers to own digital content and resell "used" copies rests largely on the outcome of the ReDigi lawsuit and any subsequent appeals. But with Europe's legal landscape already making the digital world more like the physical, publishers would be well advised to plan for the impact of a secondary digital marketplace.

For more information, see Laura Hazard Owen's article on [paidContent.org](http://paidcontent.org) at http://paidcontent.org/2013/02/05/amazon-wins-patent-to-create-a-marketplace-for-used-digital-content/?et_mid=601838&rid=233000927.

(1) *Capitol Records, LLC v. ReDigi Inc.*, No. 12-CV-95 (RJS) (S.D.N.Y. filed Jan. 6, 2012)

(2) Case C-128/98, *Axel W. Bierbach v. Oracle Int'l Corp.*, (2012).



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