

Abstract

SW License Agreement and the First Sale Doctrine

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This paper focuses on the relationship between the first sale doctrine and license agreements. Software Licensors currently write the language, "License but not sell," down on the agreement in order to avoid the application of the first sale doctrine. However, it is not justified just because they use the magic word, "license," the licensee can not obtain the ownership of copy. We should know that the ownership of copyright is different from the ownership of material object. Even if there are some restrictions on copyright license, it does not mean the ownership of material object is always retained by the licensor. The way to determine the ownership of copyrighted works is very important when the ownership of material object is transferred. This paper examines the U.S. courts' several approaches and which approach is the best way to determine copyright ownership. And then it examines whether the contract provision which prevents the transferee from reselling the material object despite the transfer of ownership is enforceable or not.

Keywords

first sale doctrine, copy ownership, copyright ownership, imperative provision, enforceability

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