



# CALLERLAB

The International Association of Square Dance Callers

## Legal Aspects of Selling and Gifting Digital Music Files

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Recently the Board of Governors addressed the legality of retiring callers selling or gifting a laptop with digital music to other callers. The question was asked of our attorney who has presented the following legal opinion.

From our attorney:

“The legality of selling or gifting digital music files has recently been addressed by the Federal Courts in *Capitol Records, LLC v. ReDigi Inc.*, 934 F. Supp. 2d 640 (S.D.N.Y. 2013). ReDigi (redigi.com) is a company that offered an online marketplace for individuals to sell their legally purchased mp3s. Capitol Records sued ReDigi, claiming copyright infringement in ReDigi's business model due to the upload of the individual's music file to the ReDigi server. Capitol Records claimed this "copying" of the file violated US copyright laws.

The Court ultimately sided with Capitol Records, finding that ReDigi was violating copyright law, mostly because ReDigi's service transferred the songs from (e.g. someone's laptop) to the ReDigi servers, and then on to the ultimate purchaser. Because these transfers involved making copies of the digital files, the Court found that the process infringed the underlying copyright, even though the ReDigi service made it so that seller's laptop was scrubbed of the mp3 once it was uploaded, so that the seller could not retain a copy as well. (Obviously, the laptop owner could have simply saved all the music to a different external hard drive before uploading to ReDigi, but that's kind of beside the point here).

However, in addition to finding that ReDigi was infringing, the court also addressed other forms of digital music sales.

The court specifically held that selling a laptop, hard drive, or other similar device with music files that were legally purchased is not a copyright infringement.

The Court stated, "Section 109(a) still protects a lawful owner's sale of his/her 'particular' phono re-cord, be it a computer hard disk, iPod, or other memory device onto which the file was originally downloaded. While this limitation clearly presents obstacles to resale that are different from, and perhaps even more onerous than those involved in the resale of CDs and cassettes, the limitation is hardly absurd. The first sale doctrine was enacted in a world where the ease and speed of data transfer could not have been imagined."

This makes sense because there is no copying at all--just the sale or gifting of a legally purchased music file.