

Summary

Testimony of the National Music Publishers' Association

In NMPA's view, parties urging the expansion of the first sale doctrine have failed to demonstrate the need or appropriateness of legislative reform in this area. Supporters of a so-called "digital first sale doctrine" are not merely seeking application of the first sale doctrine to works in digital formats. Rather, they advocate a broad new exemption from rights of the copyright owner, which bears little resemblance, in scope or purpose, to the first sale doctrine as it exists today. The very nature of the electronic transfer of copies implicates not only the exclusive distribution right of the copyright owner – the only exclusive right to which the limited privilege in section 109(a) attaches -- but also many of the other exclusive rights established in section 106 of the Copyright Act. The attempt to shoe-horn activities that involve, at a minimum, the reproduction and distribution of works into the very narrow limitations of section 109(a) flies in the face of both the letter and intent of the first sale doctrine. Moreover, the greatly expanded privileges advocated by some commentators would disrupt ongoing efforts of copyright owners to reach innovative, marketplace solutions that promote consumer access to works via new technologies while assuring that copyright owners and creators receive fair compensation.

Similarly, several commentators have advocated a dramatic weakening of the reproduction right in all works through an amendment of section 117 of the Copyright Act. Virtually identical claims were made by some of the same parties during Congress's consideration of the DMCA. The suggestion that "section 117 of the Copyright Act should exempt archival and temporary copying for digital media" was without justification in 1998 and remains without justification today.

NMPA joins and supports the joint testimony of copyright industry associations.