Imagining a Swap Meet for E-Books and Music

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80 Comments

The paperback of “Fifty Shades of Grey” is exactly like the digital version except for this: If you hate the paperback, you can give it away or resell it. If you hate the e-book, you’re stuck with it.

The retailer’s button might say “buy now,” but you are in effect only renting an e-book — or an iTunes song — and your rights are severely limited. That has been the bedrock distinction between physical and electronic works since digital goods became widely available a decade ago.

That distinction is now under attack, both in the courts and the marketplace, and it could shake up the already beleaguered book and music industries.

In late January, Amazon received a patent to set up an exchange for all sorts of digital material. The retailer would presumably earn a commission on each transaction, and consumers would surely see lower prices.

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On Thursday, the United States Patent and Trademark Office published Apple’s application for its own patent for a digital marketplace. Apple’s application outlines a system for allowing users to sell or give e-books, music, movies and software to each other by transferring files rather than reproducing them. Such a system would permit only one user to have a copy at any one time.

Meanwhile, a New York court is poised to rule on whether a start-up that created a way for people to buy and sell iTunes songs is breaking copyright law. A victory for the company would mean that consumers would not need either Apple’s or Amazon’s exchange to resell their digital items. Electronic bazaars would spring up...
The technology to allow the resale of digital goods is now in place, and it will cause a dramatic upheaval,” said Bill Rosenblatt, president of GiantSteps, a technology consulting firm. “In the short term, it’s great for consumers. Over the long term, however, it could seriously reduce creators’ incentive to create.”

Scott Turow, the best-selling novelist and president of the Authors Guild, sees immediate peril in the prospect of a secondhand digital thrift shop. “The resale of e-books would send the price of new books crashing,” he said. “Who would want to be the sucker who buys the book at full price when a week later everyone else can buy it for a penny?”

He acknowledged it would be good for consumers — “until there were no more authors anymore.”

Libraries, though, welcome the possibility of loosened restrictions on digital material.

“The vast majority of e-books are not available in your public library,” said Brandon Butler, director of public policy initiatives for the Association of Research Libraries. “That’s pathetic.”

He said that 60 percent of what the association’s 125 members buy was electronic, which meant sharp restrictions on use. Libraries cannot buy from Apple’s iTunes, he said. And so, for example, Pixar’s Oscar-winning soundtrack for the movie “Up” is not available in any public collection. An Apple spokesman confirmed this.

“If these things can’t be owned, who is going to make sure they exist going forward?” Mr. Butler asked. “Without substantial changes, we can’t do what libraries have always done, which is lend and preserve.”

For over a century, the ability of consumers, secondhand bookstores and libraries to do whatever they wanted with a physical book has been enshrined in law. The crucial 1908 case involved a publisher that issued a novel with a warning that no one was allowed to sell it for less than $1. When Macy’s offered the book for 89 cents, the publisher sued.

That led to a landmark Supreme Court ruling limiting the copyright owner’s control to the first sale. After that, it was a free market.

Sales of digital material are considered licenses, which give consumers little or no ability to lend the item. The worry is that without such constraints digital goods could be infinitely reproduced while still in the possession of the original owner.

Both the Amazon and Apple systems aim to solve this problem. Amazon’s patent envisions a book or movie or song being kept in a customer’s personalized “data store.” When an item is no longer wanted, the user could sell or trade it to another user, an action that would automatically delete the item from the first user’s store.

The patent describes what is essentially a gigantic swap meet. Amazon’s 152 million active customers would maintain a list of desired secondhand digital objects (“Django Unchained” or Cheryl Strayed’s “Wild”), as well as a list of used digital objects that are “available for movement” (“Ghost Rider: Spirit of Vengeance” or Lance Armstrong’s autobiography).

An Amazon spokesman declined to comment on the patent, including how soon or even whether the digital marketplace would be set up. The patent does not make clear if such a bazaar would need the publishers’ permission.

The degree to which media companies are against secondhand digital marketplaces can be seen in the music industry’s hard line toward ReDigi, a Massachusetts start-up that allows for the reselling of iTunes songs.
ReDigi took some pains to make its approach as friendly to the music companies as possible. For instance, any money gained from selling songs must be spent on new songs. And ReDigi says its system, like both Amazon’s and Apple’s, allows for only one copy of an electronic product to exist at any one moment.

Capitol Records nonetheless sued ReDigi for copyright infringement in a New York federal court and asked the judge to shut the service through a preliminary injunction. The judge declined. He is expected to rule on the merits of the case shortly.

An Apple spokesman did not immediately return a message seeking comment on the company’s patent application, which was first reported on Apple Insider. Apple, which has not sued ReDigi, declined to comment on the court case.

John Ossenmacher, ReDigi’s chief executive, said he was heartened by Amazon’s resale patent.

“Amazon is pretty fearless, which bodes well for the consumers of digital goods.” And, he added, for Amazon itself. “What better value to give an Amazon customer than to say, ‘Buy your book here and then later you can resell it? You can’t do that with Barnes & Noble’s Nook.”

Robert Levine, author of “Free Ride,” an account of how Silicon Valley rose to power by plundering the traditional media companies, said he believed there was a cultural imperative to loosen the restrictions on digital entertainment — but not too much.

Before the Internet, he pointed out, there was little controversy over secondhand stores for books and music. “It never threatened the broader market because it simply wasn’t that efficient,” he said. “You couldn’t always find the book or CD you were looking for.”

Amazon, which caused an uproar with writers and publishers when it started selling used books in 2000, made it as easy as clicking a button. "Digital resale would change it even more,” Mr. Levine said.

Markets usually move toward a solution both sides can live with, he noted. "But that happens slowly, and in the meantime we’re in for one hell of a fight.”

A version of this article appeared in print on March 8, 2013, on page B1 of the New York edition with the headline: Reselling the E-Goods.
Amazon could make money, bargain-shoppers could buy on the cheap, and content creators could finally get a cut of that secondary market.

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