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Site to Resell Music Files Has Critics

By BEN SISARIO

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Music fans looking to clear out some clutter can always try to sell their old CDs. But can someone resell an old digital music file of "Thriller" that's languishing on a computer?



Jon Hiller for The New York Times

Larry Randolph, left, and Steve Bender, members of ReDigi's development team, at the company's office in Cambridge, Mass.

A legitimate secondhand marketplace for digital music has never been tried successfully, in part because few people think of reselling anything that is not physical. But last month a new company, ReDigi, opened a system that it calls a legal and secure way for people to get rid of unwanted music files and buy others at a discount.

The service has already drawn concern from music executives and legal scholars, who say it is operating in a gray area of the law. Last Thursday the Recording Industry Association of America, which represents the major record companies, sent ReDigi a cease-and-desist letter, accusing it of copyright infringement.

John Ossenmacher, ReDigi's chief executive, contends that the service complies with copyright law, and that its technology offers safeguards to allay the industry's concerns that people might profit from pirated music. "ReDigi is a marketplace that gives users tools to be in compliance with copyright law," he said. "Before I put a file up for sale ReDigi says you will need to delete them, and if not it won't take them."

When a user wants to upload a song for sale, ReDigi analyzes its metadata — a kind of digital fingerprint — to verify that it came from an official store like iTunes or Amazon. (It does not accept files ripped from a CD, or others whose provenance it considers suspect.)

A desktop program then deletes any copies left on a user's computer, and can detect if that user tries to add copies

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Wall Street Journal, the chief executive of ReDigi later.

Songs on the service, which is based in Cambridge, Mass., cost 79 cents, as much as 50 cents less than the price of new tracks at iTunes. ReDigi users also get coupons worth 20 cents for each song upload for sale, effectively reducing the cost of a track to 59 cents. ReDigi's fee ranges from 5 to 15 percent, a spokeswoman said. The company also plans to open a similar market for e-books, Mr. Ossenmacher said.

Lawyers and executives in music and technology call ReDigi a novel system, but with a number of legal and practical issues that put it at odds with the music industry.

ReDigi says it is legal under the first-sale doctrine, the idea that once someone buys a copyrighted item like a CD or book, that buyer is free to resell it.

But legal scholars say that the law is unclear when it comes to digital goods because transferring a digital file from one party to another usually involves making a copy of it, something generally not allowed under copyright law.

"The real challenge for the first-sale doctrine in the digital environment," said Mark A. Lemley, a professor at Stanford Law School, "is that courts have generally said that if you've gone beyond using your copy, and made a new copy, then you're outside the scope of the doctrine."

Jason M. Schultz, an assistant professor of law at the University of California, Berkeley, said there were aspects to the first-sale law that may apply to digital goods, but have been largely untested in the courts.

"When you own something you get to customize it, modify it, move it around — the things that we do all the time with physical property," Professor Schultz said. "That needs to be applied to digital music here in order to get it off your hard drive, to their service and to the next person."

The recording industry association's letter to ReDigi, a copy of which was obtained by The New York Times, says that the company violates copyright by making copies of files, and by providing 30-second samples of songs without licenses. A spokeswoman for ReDigi said on Friday that the company had not received the letter.

Mr. Ossenmacher, who has a background in technology and marketing, with several patents for fluorescent lighting and experience in social networking, said that his company has developed a process it calls an "atomic transaction" that can transfer files between users without copying.

That and other claims have been disputed by music and technology specialists, including Steve Scherf, a founder of CDDP, a system now known as Gracenote, that is widely used by iTunes and other programs to analyze and identify the music on people's computers.

"I have some serious doubts about their technologies," Mr. Scherf said in an interview. "There are things in it which as far as I can tell are just hype."

Mr. Ossenmacher said that ReDigi could tell if a user tried to put a file on their computer after already uploading it for resale. The service can also detect if a song on a connected iPod is another such copy, and would suspend a user's account if the files were not removed. But he conceded that the service is not foolproof.

"If someone willfully wants to violate copyright law," he said, "then there may be ways that they can ultimately beat the system."

ReDigi's system is not the first attempt at a secondhand digital marketplace. Three years



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ago a company called Bopaboo announced plans for a similar service, but it was unable to get licenses from record companies, and the project was abandoned.

Mr. Ossenmacher said that ReDigi has offered to pay labels and artists a "gratuity" as a good-will gesture, even though the first-sale rule would make that unnecessary.

The company's business plan calls for it to take a fraction of every sale on the service. But like many start-up companies in digital music, to turn a profit ReDigi will need to attract large numbers of users.

"If nothing in ReDigi sells," he said, "we're dead."

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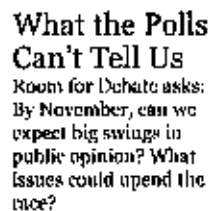
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