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## **THE FIRST SALE DOCTRINE**

The Entertainment Merchants Association (EMA) is committed to maintaining and protecting the first sale doctrine of copyright law. The first sale doctrine gives retailers the right to rent and sell prerecorded videos and video games without the authorization of the copyright holder, thereby guaranteeing that consumers will benefit from the most vigorous retail competition.

The U.S. Constitution vests in Congress the authority to enact copyright laws for the purpose of promoting the progress of science and the useful arts “by securing for Limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Copyright law strikes a balance between protecting the ability of copyright holders to obtain compensation for their work and making those works available to the public to enjoy and benefit from.

In exchange for the federal government protecting copyright holders from unauthorized publication or performance of their works, copyright law requires copyright holders to give up their ability to control distribution of those works once they have put them into the stream of commerce (except in certain carefully delineated instances). This principle, commonly referred to as the “first sale doctrine,” is codified in Section 109 of the Copyright Act.

Section 109(a) provides that, notwithstanding a copyright holder’s distribution right, the owner of a particular copy or phonorecord lawfully made under U.S. copyright law “is entitled, without the authority of the copyright owner, to sell or otherwise dispose of that copy or phonorecord.”

The freedom to rent and resell videos and video games without interference from the copyright holder guaranteed by the first sale doctrine has provided consumers with access to affordable, quality entertainment that they can enjoy in their homes, generated substantial revenues for the motion picture studios and video game manufacturers, and created the highly competitive video rental industry, a thriving sector of primarily community-based businesses.

Retailers have a strong interest in ensuring that new technologies respect the rights provided to them by the first sale doctrine. The history and language of the Copyright Act demonstrate that the first sale doctrine applies to all fixed copies, including those in digital media.

EMA is opposed to efforts by copyright holders to use technological measures and unilateral, non-negotiable contracts to circumvent the operation of the first sale doctrine. EMA believes that a copyright holder impermissibly extends the protections provided by the Copyright Act when access control technologies and end user license agreements are used to control or prevent the lawful use and re-distribution of lawfully made videos and video games by the lawful owner. In such cases, these technologies and agreements are not being used to protect intellectual property rights, and may undermine retail competition and consumer choice.