

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3
4 August Term, 2017

5
6 (Argued: August 22, 2017 Decided: December 12, 2018)

7
8 Docket No. 16-2321

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10
11 Capitol Records, LLC, Capitol Christian Music Group, Inc., Virgin Records IR
12 Holdings, Inc.,

13
14 *Plaintiffs-Appellees,*

15
16 v.

17
18 ReDigi Inc., John Ossenmacher, Larry Rudolph, AKA Lawrence S. Rogel,

19
20 *Defendants-Appellants.*

21
22
23 Before:

24
25 JON O. NEWMAN, PIERRE N. LEVAL, and ROSEMARY S. POOLER,
26 *Circuit Judges.*

27
28 Defendants, ReDigi Inc. and related persons, appeal from the grant of
29 partial summary judgment and stipulated final judgment by the United States
30 District Court for the Southern District of New York (Richard J. Sullivan, J.) in
31 favor of Plaintiffs, record companies whose copyrighted sound recordings
32 were resold through the ReDigi platform. The district court found copyright
33 infringement. AFFIRMED.

34
35 RICHARD S. MANDEL, New York,
36 N.Y. (Jonathan Z. King, Cowan,
37 Liebowitz & Latman, P.C., New York,
38 N.Y., on the brief), *for Plaintiffs-Appellees.*

1 ROBERT C. WELSH, New York, N.Y.
2 (C. Dennis Loomis, Baker & Hostetler
3 LLP, Los Angeles, CA, on the brief) *for*
4 *Defendant-Appellants.*
5

6 LEVAL, *Circuit Judge:*

7 Defendant ReDigi, Inc. and its founders, Defendants Larry Rudolph
8 and John Ossenmacher,¹ appeal from the judgment of the United States
9 District Court for the Southern District of New York (Richard J. Sullivan, *J.*) in
10 favor of Plaintiffs, Capitol Records, LLC, Capitol Christian Music Group, Inc.,
11 and Virgin Records IR Holdings, Inc. (“Plaintiffs”), finding copyright
12 infringement. Defendants had created an Internet platform designed to enable
13 the lawful resale, under the first sale doctrine, of lawfully purchased digital
14 music files, and had hosted resales of such files on the platform. The district
15 court concluded that, notwithstanding the “first sale” doctrine, codified in the
16 Copyright Act of 1976, 17 U.S.C. § 109(a), ReDigi’s Internet system version 1.0
17 infringed the Plaintiffs’ copyrights by enabling the resale of such digital files
18 containing sound recordings of Plaintiffs’ copyrighted music. We agree with
19 the district court that ReDigi infringed the Plaintiffs’ exclusive rights under 17

¹ Hereinafter “ReDigi” is used to designate all three Defendants, except where the context makes clear it refers solely to the company.

1 U.S.C. § 106(1) to reproduce their copyrighted works. We make no decision
2 whether ReDigi also infringed the Plaintiffs' exclusive rights under 17 U.S.C.
3 § 106(3) to distribute their works.²

4 BACKGROUND

5 I. Facts

6 Plaintiffs are record companies, which own copyrights or licenses in
7 sound recordings of musical performances. Plaintiffs distribute those sound
8 recordings in numerous forms, of which the most familiar twenty years ago
9 was the compact disc. Today, Plaintiffs also distribute their music in the form
10 of digital files, which are sold to the public by authorized agent services, such
11 as Apple iTunes, under license from Plaintiffs. Purchasers from the Apple
12 iTunes online store download the files onto their personal computers or other
13 devices.

14 ReDigi was founded by Defendants Ossenmacher and Rudolph in 2009
15 with the goal of creating enabling technology and providing a marketplace

² We do not adjudicate whether ReDigi's system version 2.0 infringed any of the Plaintiffs' rights as this question (although stipulated in the final judgment) was not litigated in the district court. Defendants stipulated that a judgment in Plaintiffs' favor would enjoin the Defendants, as well as all persons in specified relationships with the Defendants, such as their "officers, agents, servants, representatives . . . and licensees," from implementing version 2.0. Stipulated Final Judgment ¶5, *Capitol Records, LLC. V. ReDigi, Inc.*, No. 12-CV-95 (RJS), ECF No. 222 (S.D.N.Y. June 3, 2015).

1 for the lawful resale of lawfully purchased digital music files.³ Ossenmacher
2 served as ReDigi's Chief Executive Officer and Rudolph, who spent twelve
3 years as a Principal Research Scientist at the Massachusetts Institute of
4 Technology, served as ReDigi's Chief Technical Officer. During the period
5 addressed by the operative complaint, ReDigi, through its system version 1.0,
6 hosted resales of digital music files containing the Plaintiffs' music by persons
7 who had lawfully purchased the files from iTunes.

8 Considering the evidence in the light most favorable to ReDigi,
9 ReDigi's system version 1.0 operates as follows.

10 1. *Music Manager*: A person who owns a digital music file lawfully
11 purchased from iTunes and intends to employ ReDigi's system to resell it (the
12 "user") must first download and install onto her computer ReDigi's "Music
13 Manager" software program ("Music Manager"). Once Music Manager has
14 been installed, it analyzes the digital file intended for resale, verifies that the
15 file was originally lawfully purchased from iTunes, and scans it for

³ ReDigi was not making efforts in the shadows to infringe on copyrights. To the contrary, it invented a system designed in good faith to achieve a goal generally favored by the law of copyright, reasonably hoping the system would secure court approval as conforming to the demands of the Copyright Act.

1 indications of tampering. If the file was lawfully purchased, Music Manager
2 deems it an “Eligible File” that may be resold.⁴

3 2. *Data Migration:* The ReDigi user must then cause the file to be
4 transferred to ReDigi’s remote server, known as the “Cloud Locker.” To
5 effectuate this transfer, ReDigi developed a new method that functions
6 differently from the conventional file transfer. The conventional process is to
7 reproduce the digital file at the receiving destination so that, upon completion
8 of the transfer, the file exists simultaneously on both the receiving device and
9 on the device from which it was transferred. If connectivity is disrupted
10 during such a standard transfer, the process can be repeated because the file
11 remains intact on the sender’s device.

12 Under ReDigi’s method—which it calls “data migration”—ReDigi’s
13 software “begins by breaking the [digital] music file into small ‘blocks’ [of
14 data] of roughly four thousand bytes in length.” Appellants Br. 24. Once the
15 file has been broken into blocks of data (“packets”), ReDigi’s system creates a
16 “transitory copy” of each packet in the initial purchaser’s computer buffer. *Id.*

⁴ Music Manager will deem a file “Eligible” if it was purchased by the user from iTunes or it was purchased by the user through ReDigi, having been originally purchased lawfully by another from iTunes.

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