

Who Owns Your Software?

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If you have recently purchased software or a product that includes software, such as a video game, digital video disc (DVD), compact disc (CD), or cell phone, it is very important that you review the end user license agreement that accompanied the product. In most cases, you will discover that you only have a license to use the software and that you do not own the software. While this may seem unfair, it is no different than renting a car from Hertz, or leasing an apartment. While you are permitted to use the car and live in the apartment, you cannot resell them, because you are only "borrowing" them.

Similarly, if you do not own the software, you may be restricted in your ability to copy or resell the product and run the risk of being found liable for copyright infringement if you do. Depending on the terms of the end-user license agreement that came with the original software, the seller of the used software and the buyer of the used software could be liable for copyright infringement. A recent decision from the United States Court of Appeals addressed this important issue and found a purchaser of used software, who then resold it, liable for copyright infringement.

If your business model includes buying or selling software, video games, DVDs, CDs, cell phones, or any other products that include a copyrighted work, we strongly recommend that your attorney review any agreements that accompanied the product to determine if there are any restrictions that, if violated, could expose you to a copyright infringement claim. If you are the owner of a copyrighted work, it is important that your attorney review your sales agreement and end-user license agreement to determine whether they should be modified to prohibit copying and reselling by the original buyer.

If you feel that your business may be impacted by this information or have any other questions related to intellectual property, please contact Gail Podolsky at 404.815.2714 or gpodolsky@carltonfields.com.