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**TESLAW**

**THE STATE BAR OF TEXAS  
ENTERTAINMENT & SPORTS LAW SECTION**

May 15, 2013

**TESLAW E-Newsletter  
March 15, 2013  
Issue No.3**

Dear TESLAW Members,

The State Bar of Texas Annual Meeting is just around the corner, so we are busy preparing for elections for our officer positions (Chair-elect, Secretary and Treasurer) and council positions that expire. I will be sending out an e-Blast later this month with the nominating committee's proposed slate. We have a lot of great candidates, so we hope that you will be able to join us on Friday afternoon, **June 21<sup>st</sup>**, for our annual meeting and election at the Hilton Anatole in Dallas, Texas. We have four great speakers lined up to discuss video game law, celebrity engagement deals and, of course, sports! Don't forget to [register and book your room](#).

Also, please mark your calendars for the 23<sup>rd</sup> Annual Entertainment Law Institute, which will be held in Austin on **September 26-27, 2013** at the DoubleTree Hotel.

If you are interested in getting involved with TESLAW, please let us know. When the new slate of officers are elected next month they will be looking to fill committee positions. So right now is a great time to get involved!

Sincerely,  
[Shannon Jamison](#), Chair  
Entertainment and Sports Law Section

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**TESLAW Member Spotlight**



Erin Rodgers is an entertainment lawyer based in Houston, Texas whose focus includes copyright and trademark, licensing, and contracts. In addition to her work in entertainment law, Erin also assists nonprofit organizations in obtaining tax-exempt status.

Aside from her own legal practice, Erin is currently Of Counsel to the Law Office of Al Staehely where she began as a law clerk in 2003, and is also the Staff Attorney of Texas Accountants and Lawyers for the Arts, an arts organization which offers pro bono services to artists and nonprofit arts organizations in Texas. She also manages the Rawlins Licensing Firm, a company specializing in arrangement licensing for marching bands, and is currently the President of Girls Rock Camp Houston.

Erin is a classically-trained clarinetist and has performed as a vocalist with Dave Brubeck, the Louisiana Philharmonic Orchestra, and in Carnegie Hall. Erin currently plays keys and sings in the Houston-based band Glass the Sky, and will be filling in on keyboards for The Invincible Czars' summer tour. For more information about Erin, [click here](#).

*To be considered for the TESLAW Member Spotlight please submit a short bio (no more than 200 words) and photograph to Victoria Helling, [E-Newsletter Editor](#).*

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## ***Records, LLC v. ReDigi Inc. Case Note by Taylor B. Melton***

Capitol Records, LLC, the recording label of The Beatles and Frank Sinatra, brought a copyright infringement action against ReDigi Inc., a twenty-first century technology company. ReDigi provides online users with a virtual marketplace to re-sell their unwanted digital music and purchase other used digital music at a fraction of the iTunes price. The ReDigi service allows users to upload eligible digital music files in exchange for credits to apply toward other used music purchases. A file was only eligible if it was purchased on iTunes or from another ReDigi user. Capitol raised multiple copyright infringement claims against ReDigi. In response, ReDigi raised a first sale defense and argued that the doctrine permitted the resale of music files in the world's first and only online marketplace for digital used music.

Less than two weeks before the *Capitol Records* court decision, the Supreme Court, in *Kirtsaeng*, expanded the scope of the first sale doctrine. 133 S. Ct. 1351 (U.S. 2013). Under Section 109 of the Copyright Act, the first sale doctrine allows the owner of a copy "lawfully made under this title" to sell or otherwise dispose of the copy without the copyright owner's permission. The issue in *Kirtsaeng* was whether the first sale doctrine also applied to a copy that was made and legally acquired abroad, then imported into the United States. The Supreme Court held that the first sale doctrine did apply to such copies.

In this case, the issue was whether a digital music file, lawfully made and purchased, could be resold by its owner through ReDigi under the first sale doctrine. The Court distinguished digital music copies from physical copies, such as used books or used records at a record store. The distinguishing factor is whether a new material object is created. When someone purchases or resells a used textbook, as in *Kirtsaeng*, there is no creation of a new material object. Rather, it is merely a transfer of that specific copy, and allowed under the first sale doctrine. In contrast, when a digital music file is transferred from one hard drive to another, like the ReDigi server, the specific music file itself is not sent. Instead, a digital sequence of code that represents the file is sent to the new hard drive and the code is reproduced. Regardless of whether the original music file is deleted from the old location, a new material object has still been created.

Capitol Records owned the copyrights and did not approve of the reproduction of its copyrighted recordings through ReDigi's service. The Court held that digital file transfers over the Internet result in the creation of new material objects. The Court also held that the first sale doctrine did not apply here, and could not condone the wholesale application of the first sale defense to the digital sphere. The Court found ReDigi liable for direct, contributory, and vicarious copyright infringement. 2013 U.S. Dist. LEXIS 48043 (S.D.N.Y. Mar. 30, 2013).

*Taylor Melton is a third year law student at South Texas School of Law in Houston. He will graduate in May 2014, and is interested in practicing intellectual property, energy, and business law.*

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## Practice Document

Please find the link to our May E-Newsletter a [Basic Location Release for Film/TV \(Unpaid\)](#) provided by Amy E. Mitchell, Esq. practicing in Austin, Texas.

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## Bonus Section: Legislative Update

Please find the link to our May E-Newsletter an [83<sup>rd</sup> Texas Legislature Update](#) on bills affecting our industry. Provided by Roberto "R.C." Rondero de Mosier of Gonzalez Mosier located in Austin, Texas.

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*Send questions, comments, and submissions for the TESLAW E-Newsletter to Victoria Helling, [E-Newsletter Editor](#).*

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