

*Vernor v. Autodesk: An Erosion of First Sale Rights*]

38 Rutgers L. Rec. 213 (2011) | [WestLaw](#) | [LexisNexis](#) | [PDF](#)

The first-sale doctrine is a long-standing exception to the exclusive right to distribution granted under copyright law. It provides that a copyright holder, after the initial sale of a copy of a work, has no right to control any downstream sales, rentals, or lending of that same copy. The courts universally agree that works which are licensed by the copyright holder, due to the lack of initial sale, are not subject to the first sale doctrine. The recent *Vernor v. Autodesk* decision by the United States Court of Appeals for the Ninth Circuit examined the first sale doctrine, focusing on software licenses and their effects on downstream sales. The selling of software which was purchased from the original buyer and then subsequently sold on eBay was considered to be copyright infringement. The court considered the transfer of the software license, and in doing so very clearly delimited the defining features of what creates a license as opposed to a sale. The court, however, in laying out a very simply-followed cook-book-style recipe to avoid a first-sale, drastically shifts the rights of downstream consumers back to copyright holders, severely damaging a century's worth of rights balancing which promotes restraints on alienation and the demise of secondary media markets. This paper begins with an overview of the relevant copyright law and introduces the *Autodesk* case. Following this is a discussion of the effects of the court's decision on first-sale rights and the suggestion for Congressional intervention to help ameliorate the problems that will inevitably stem from this ruling.

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