



## Question Q240

**National Group:** AIPPI-US Division of AIPLA

**Title:** Exhaustion issues in copyright law

**Summary:**

The United States has long recognized the “first sale” or exhaustion doctrine in connection with material items. As a general rule, once a valid copy of a copyrighted item has been sold, the copyright owner’s right to further control its disposition is extinguished. For years it was unclear whether this exhaustion extended to copies of a copyrighted work lawfully made outside U.S. borders. Last year, however, the U.S. Supreme Court held that once a copy has been legally made anywhere in the world, the copyright owner may no longer control its sale or other disposition. Generally speaking, the first sale doctrine does not apply to licensed items. Other exceptions to the doctrine include limitations on the rental of phonorecords and software for commercial advantage. In addition, works of visual art are subject to the rights of attribution and integrity. The U.S. Copyright Act does not expressly address exhaustion of digital copies, although at least one (non-precedential) court in New York found that the first sale doctrine does not extend to digital copies.

The AIPPI-US Division does not take a position on the issue of exhaustion of digital copies, in part because it believes that some of the most vexing questions inherent in digital copy exhaustion—e.g. concerns over whether a digital copy can be kept by a seller—will be addressed as technology evolves. That said, given the relative ease with which digital sales occur across borders, AIPPI-US does favor addressing harmonization of digital copy exhaustion. Also, contrary to U.S. law, AIPPI-US does not favor international exhaustion.