COPYRIGHT AND GOOD FAITH PURCHASERS

Shyamkrishna Balganesh†

Good faith purchasers for value—individuals who unknowingly and in good faith purchase property from a seller whose own actions in obtaining the property are of questionable legality—have long obtained special protection under the common law. Despite the seller’s own actions being tainted, such purchasers obtain valid title themselves and are allowed to freely alienate the property without any restriction. Modern copyright law however does just the opposite. Individuals who unknowingly and in good faith purchase property embodying an unauthorized copy of a protected work are altogether precluded from subsequently alienating such property, or risk running afoul of copyright’s distribution right. Such good faith purchasers are also given absolutely no protection by the first sale defense, which requires that the first copy, i.e., the seller’s copy, be lawfully made for it to apply. This Article shows how the concerns motivating the good faith purchaser doctrine in the common law, relating to the free alienability of property and the informational burdens that consumers might have to unduly bear, carry over to the principal settings where modern copyright law operates. It then argues for the creation of a similar doctrine in copyright law, under which a seller who makes an unauthorized reproduction of the work and embodies the infringing copy into an object is treated as having “voidable” rather than void title to the object and a good faith purchaser of the object from the seller is thereafter permitted to alienate it, subject to certain important restrictions.

† Assistant Professor of Law, University of Pennsylvania Law School.