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Is It Legal To Trade Software That Has Been Legally Purchased?

[Kristie Prinz](#)**Q.**

Is it legal to trade original software that has been legally purchased? I am interested in adding a section to my website that would facilitate people trading original copies of software. I have programs such as games and applications I no longer use and rather than throw them away I'd like to give them to people who may want them. The idea is to only cover the costs if shipping. I'm guessing this is legal since it's done on e-bay for profit but I don't want to get in any trouble.

-- *Anonymous***A.**

The problem with transferring copies of software is not so much with the physical copies of the software but rather with the terms of the clickwrap license embedded inside the software.

While the terms of clickwrap licenses are not uniform and vary with the different software products, software licenses may contain terms that prohibit the transfer of the product, limiting the rights to the initial purchaser or user of the product. Thus, it is very feasible that someone could obtain a used copy of the software but not have the rights to legally install and run the software. Since clickwrap licenses are generally embedded in the software, it is going to be difficult to review the terms of the applicable license prior to the loading and/or installing the software.

Can you run into legal problems from facilitating the transfer of a used software product? Well, I am unaware of any specific cases where this set of facts has arisen; however, it is not out of the question that you could have a problem. In recent years, courts have been moving toward holding third parties liable for facilitating, contributing, or even inducing another party's infringement of intellectual property. A recent example of such a scenario is in the peer-to-peer file sharing litigation. If you transfer your software to someone else knowing they plan to use it and are likely to infringe on the copyright owner's rights in the work, then this could potentially lead to problems.

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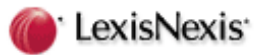
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Overall, your safest course of action with respect to transferring software is to know the terms of the applicable clickwrap license and to adhere to the terms of that license when it comes to sharing software with any third party. You should retain a copyright licensing attorney in your jurisdiction to review the terms of any embedded license and advise you on whether or not the license is transferable to third parties. Once you have that information in hand, you will be in a position to decide how best to proceed.

-- *Kristie Prinz*

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